

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65272 of 2025

Arising Out of PS. Case No.-239 Year-2022 Thana- DUMRAO District- Buxar

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Dipak Kumar Rai Son of Late Sohasnath Ray Resident of Ward No. 20,
Chhathiya Pokhara, Dumraon, P.S.- Dumraon, District - Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sunil Pathak Son of Late Janardan Pathak Resident of Village - Safakhana
Road, P.S.- Dumraon, District - Buxar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kr. Singh, Sr. Advocate
Mr. Sudhir Singh, Advocate
Mr. Ashish Kumar, Advocate
Mr. Mukul Kumar, Advocate
Mr. Rahul Rathore, Advocate

For the Opposite Party/s : Ms. Sucheta Yadav, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 26-09-2025

Heard Mr. Rajesh Kr. Singh learned Senior Counsel
along with Mr. Sudhir Singh, Mr. Ashish Kumar, Mr. Mukul
Kumar, Mr. Rahul Rathore learned counsels appearing on
behalf of the petitioner and Ms. Sucheta Yadav, learned APP for
the State.

2. The present application has been filed for quashing
the order dated 28.07.2025 passed in Sessions Trial
No.260/2023 by the learned Sessions Judge, Buxar by which
application filed by the prosecution under Section 311 of the
Cr.P.C to produce and peruse the DVD Hard disk, Memory of



the seized CCTV camera in presence of all the concerned has been rejected.

3. Learned Senior Counsel appearing on behalf of the petitioner appreciating the impugned order dated 28.07.2025 passed by the learned Sessions Judge and taking into consideration the conclusion drawn by him to be contrary to the observation and consideration made by him in his order dated 28.07.2025, seeks interference of this Court. Learned Senior Counsel in support of his relief having been prayed submitted that the prosecution had prayed to call the DVD hard disk memory and CCTV camera seized from Mens Parlour, Dumraon before the Court for perusal and to mark exhibit, but the same were not done. The aforesaid items were seized in course of investigation and the seizure list was prepared at Mens Parlour (Saloon), Dumraon on 06.06.2022 at 00:30 hours in front of two independent witnesses, which bears the signature of S.I., Dumraon who had prepared the seizure list and the same has been made part of the FIR. The details of the items which were seized are as under:

- i) One D.V.R. (CP Plus Model: CP-UVR-0401E1-C9, SIN: 2102011778014134, MC:- 14:07:08:91:AB72)
- ii) One Charger



iii) One 3"x5" Electronic Part (CP Plus, Metal Case CCTV power supply Model CP-DPS-MD60-12D, Input:- 12VDC-5Amp, SIN- 2111011571028447 EAN - 4260693411691)

4. It is submitted that after the seizure list was prepared, the learned CJM, Buxar vide letter Nos.724 and 725 dated 05.08.2022 had granted permission to send the aforesaid seized articles for examination at Forensic Science Laboratory, Patna. He further submitted that though the learned Chief Judicial Magistrate had granted permission for examination of CCTV footage and DVD seized from the place of occurrence, but it was never sent to the Forensic Science Laboratory, Patna for examination. The Investigating Officer was examined in course of trial and in cross-examination he had stated that in course of entire investigation, the authenticity of DVR hard disc memory, CD ROM and the audio video recorded in CCTV have not been verified since the FSL, Patna told that it was not required. In support, learned counsel has referred to deposition of PW 8/ first Investigating Officer/ Anil Kumar which has been brought on record by way of Annexure 3 and also the deposition of PW 3, the second IO and his cross-examination. Learned counsel submitted that if the vital evidence which has been



called is not taken into consideration that will lead to failure of justice. On these grounds, learned counsel seeks interference of this Court with the order dated 28.07.2025.

5. Learned APP appearing on behalf of the State has submitted that the order cannot be interfered with upon analysis of the circumstances of the case and stage of trial. The petitioner has tried to delay the trial when the defence argument is going on and to fulfill the lacuna, such application has been made. The present application is fit to be dismissed.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, having perused the FIR and the materials available on record and the application filed under Section 311 of Cr.P.C. which was filed on 30.06.2025 and the deposition of the witnesses, the seizure list forms part of the FIR dated 06.06.2022 lodged in connection with Dumraon P.S. Case No.239 of 2022, I appreciate the consideration made by the learned District Court while considering the application filed on behalf of the petitioner under Section 311 of Cr.P.C. The observation of the learned District Court is worthy to be taken note of which is reproduced hereinafter:

"From perusal of the case record it transpires that P.W.6 Prashant Kumar @ Prashant Thakur who is the owner of the Dumraon Men's parlor has stated in his



examination in chief, in para-1. that production cum seizure-list belonging to Dumraon PS case number 239/22 dated 6.6.2022 Bears his signature which was marked as Exhibit PW6/Exhibit-P3/1. In the cross examination, he has stated the police has not seized any articles from his shop because on the alleged date he went to attend marriage function. He has also stated the articles which were seized from his shop was not shown to him.

It further transpires from the case record that no certificate regarding to the genuineness of the seized original Hard Disc along with CCTV footage has been filed on the behalf of the prosecution. The said certificate was to be issued by the owner of the Men's Parlour, Dumraon. The owner of the Men's Parlour, Dumraon has neither in his examination in chief nor cross examination has stated that there was CCTV installed in his shop.

It was the duty of the investigating officer to get the hard disk examined from Forensic Science Laboratory to ensure that it was not tempered and further it was also the duty of the prosecution to give the copy to the defense so that the defence may defend itself.

Till today the said hard disk has not been examined by the Forensic Science Laboratory regarding its genuineness and no certificate has been produced by the prosecution. The prosecution has filed application when the defense argument is going on. It transpires that when raised by the defense the prosecution came to know about the lacuna of the case and wants to fulfill the lacuna by way of this application.

Hence, the application dated 30.06.2025 and 14.07.2025 filed by the prosecution is rejected. Put up on 30.07.2025 for argument of the defence."

8. It is well settled that the aim of the Court is to discover the truth. Section 311 of Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. The Apex Court in the case of **V. N. Patil Vs. K. Niranjan Kumar (Criminal Appeal No(s).267 of 2021) arising out of SLP (Crl.) No(s).8965 of 2018**, in paragraphs no.14, 15 and 18, has made following observations:



*14. The scope of Section 311 CrPC which is relevant for the present purpose is reproduced hereunder:—
“311. Power to summon material witness, or examine person present—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*

15. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion.”

18. The aim of every Court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.”

9. Regard to the order dated 28.07.2025, I find that the order is not convincing to the extent that the learned District Court could not have rejected the application filed on behalf of the prosecution only on the ground that defence argument is going on. The hard disc along with CCTV footage will only facilitate to discover the truth as the commission of murder took place at the Mens Parloour, Dumraon owned by PW 6/ Prashant Kumar. The scope of Section 311 Cr.P.C. can be seen from the



perusal of the said section as under :

“Section 311 Cr.P.C.: Power to summon material witness, or examine person present- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.”

10. I find that the object with which the Section 311 has been contained in Cr.P.C. is that there may not be failure of justice on account of mistake by either party in bringing valuable evidence on record or leaving ambiguity in the statement of witnesses examined from either side. The very expression that occurs is “ at any stage of any enquiry or trial or other proceeding under this Code”. The power however is required to be exercised judiciously. Though the learned District Court has taken note of the entire gamut of the case and the merits of the application made under Section 311 of Cr.P.C, he has found not proper to get the FSL examination of the DVD Hard disc memory and CCTV camera seized from the Mens parlour and to mark it as exhibit by exercising his extra ordinary jurisdiction under Section 311.

11. In above background and the law laid down by the Apex Court in case of **V. N. Patil (Supra)**, the impugned order dated 28.07.2025 is set aside and quashed for passing fresh



order by the learned District Court in accordance with law.

12. The application stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.09.2025
Transmission Date	28.09.2025

