



131 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-6782-2025

Date of decision: 06.02.2025

SUKHJIT SINGH AND ANOTHER

....Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhwinder Singh Kamboj, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 528 of BNSS seeking quashing of the impugned order dated 21.10.2024 (Annexure P-9) passed by learned Judicial Magistrate Ist Class, Malerkotla District Malerkotla in FIR No. 106 dated 30.05.2020 registered under Sections 353, 186 and 34 of Indian Penal Code at Police Station Sadar Ahmadgar, District Malerkotla, whereby the application moved by the prosecution under Section 311 Cr.P.C. for summoning the clerk of the MC Ahmedgarh along with record as additional evidence, has been allowed.

Brief facts of the case are that petitioner No. 1 Sukhjot Singh on 24.02.2016 purchased a plot of 10 biswas situated in village Malakpur Tehsil Malerkotla. After purchasing the plot, petitioner No. 1 raised boundary wall and shed in the property in dispute as petitioner No. 1 is doing the work of welding. One Kuljinder Singh who owns a house adjoining to the plot of the petitioners started interfering in the property in dispute. Then, petitioner No. 1 filed a civil suit against the MC Ahmedgarh and Kuljinder Singh restraining them from causing any interference in the peaceful construction being raised by him over the property in dispute. Thereafter,



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vide order dated 12.05.2017 (Annexure P-1), learned trial Court granted interim stay to the petitioner No. 1 and held that Kuljinder Singh has no right to interfere in the property in dispute. Thereafter, petitioner No. 1 transferred part of the said land i.e. 50 sq. yards to his mother i.e. petitioner No. 2 and she got sanctioned the site plan from MC Ahmedgarh vide sanction letter dated 18.09.2017 (Annexure P-2). Then petitioner no. 2 applied for sanction of the site plan. However, MC Ahmedgarh raised objection that total area of the property be corrected and in the sale deed property be shown in the MC limits instead of revenue area. Thereafter, MC Ahmedgarh filed a criminal complaint against the petitioners under Section 195-A of Punjab Municipal Act, 1911. On 04.09.2019, employees of MC Ahmedgarh came to the property in dispute and demolished the shed which was raised in the year 2016, however, the interim stay was operating against the respondents. Thereafter, an FIR was registered against the petitioners alleging that the petitioners have restrained the officials from demolishing the shed on 04.09.2019, and the FIR(supra) was lodged on 30.05.2020 under Sections 353, 186 and 34 of Indian Penal Code. Thereafter, respondent moved an application dated 28.03.2024 under Section 311 of Cr.P.C. for producing the additional documents and the said application was allowed vide impugned order dated 21.10.2024.

Learned counsel for the petitioner *inter alia* contends that the learned trial Court has erred in allowing the application under Section 311 of Cr.P.C. without taking into consideration the fact that neither the police is having right to file the challan in the case nor the Court is having jurisdiction to take cognizance due the bar created by the law under Section



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195 Cr.P.C. Furthermore, it is a case of the prosecution that MC Ahmedgarh employees have been stopped to demolish the shed in which stay was granted by the Court against the MC Ahmedgarh and employees of MC Ahmedgarh were trying to demolish the shed on the basis of judgment passed by learned JMHC in criminal case. Further, all the documents existed prior to the institution of the complaint and the application under Section 311 of Cr.P.C. is merely an attempt to fill up lacuna in the case of the respondent which is prejudicial to the petitioner.

Having heard learned counsel for the petitioner and after perusing the records, it transpires that the prosecution wants to produce on record letters moved by the complainant bearing Nos. 3514 dated 04.09.2019 and No. 4296 dated 20.12.2019 to SHO and complaint bearing No. 89 of 2018 decided on 20.03.2019. Further, there is also a mention of complaint No. 89 of 2018 in the judicial file. Thus, the aforementioned letters and complaint are essential and material for the just and proper adjudication of the trial. The evidence which is being sought to be produced on record, would be necessary for deciding the controversy effectively. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court passed in 'Varsha Garg Vs. The State of Madhya Pradesh and others' Cr. Appeal No. 1021 of 2022 and the judgment of this Court passed in 'Vinod Kumar Vs. State of Haryana and others' CRR No.377 of 2020.

A two judge Bench of the Hon'ble Supreme Court in **V. N. Patil vs. K. Niranjan 2021(2) R.C.R.(Criminal) 310**, examined the scope of the power under Section 311 of Cr.P.C and speaking through Justice



Ajay Rastogi, the following was observed:

“Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 enquiry 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.”

The Hon’ble Supreme Court in ***Mohanlal Shamji Soni vs. Union of India and another*** AIR 1991 SC 1346 has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, the power under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill and existence of the evidence being essential for the just adjudication of the case is the only guiding factor and that only the ends of justice requires the examination of any person which would depend to the facts and circumstances of each case. It was further held that it is obligatory on the part of the court to summon the witness in case his evidence appears to be essential for just decision of the case. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just



decision of the case.

A Division Bench of this Court in ***Sukhdev Singh vs. State of Punjab*** 1982 Cr. LJ 2201 has held as under:

“The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount an should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds”.

Keeping in view the above discussion, this Court finds that learned Court below has correctly adverted to the factual matrix in the light



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of the provision of Section 311 of Cr.P.C. and thus, this Court finds no merit in the present petition and, as such, the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

06.02.2025*Ajay Goswami*

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No