



**240 THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-9317-2025

Date of Decision: 19.09.2025

Lakhbir Singh @ Lakha

..... Petitioner

Versus

State of Punjab and another

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ravi Malhotra, Advocate for the petitioner.

Mr. Raj Karan Singh, A.A.G., Punjab.

Mr. S.S. Mor, Advocate/Amicus Curiae
for respondent No.2.

RAJESH BHARDWAJ, J.

1. Present petition has been filed for quashing of order dated 09.12.2024 passed by the learned Judicial Magistrate First Class, Jalandhar, whereby application of prosecution under Section 311 Cr.P.C. has been allowed wrongly and illegally in FIR No.228 dated 12.09.2015 under Section 420 of IPC, registered at Police Station, Rama Mandi, District Jalandhar, being wrong and illegal.

2. Succinctly, the facts of the case are that the petitioner has been prosecuted by respondent No.2 in the abovementioned FIR. It was alleged that respondent No.2/complainant was cheated by the petitioner for an amount of Rs.7,80,000/- on the promise of appointing his son, namely, Parminder Singh, in the Merchant Navy. However, after taking the amount of Rs.7,80,000/- neither his son was got appointed in Merchant Navy nor his money was returned. On completion of investigation, challan was presented and on framing of charges, the trial commenced. During trial, the prosecution examined PW-7, namely, Anil



Kumar, however, on closing the prosecution evidence, the prosecution filed an application under Section 311 Cr.P.C. for recalling this witness i.e. PW-7 Anil Kumar. The learned trial Court vide impugned order dated 09.12.2024, allowed the same. Aggrieved by the same, the petitioner has approached this Court by way of filing of present petition.

3. At the time of issuance of notice, learned counsel for the petitioner has submitted that the petitioner is not aggrieved with the summoning of record from the Bank, however, he is aggrieved with the recalling of witness i.e. PW-7, Anil Kumar and hence, on this limited point, this Court issued notice vide its order dated 10.03.2025.

4. Learned counsel for the petitioner has vehemently contended that the application filed by the petitioner under Section 311 Cr.P.C. is totally against the spirit of law. He submits that PW-7 was earlier examined before the trial Court on 02.03.2023. Thereafter, he has been summoned vide impugned order dated 09.12.2024. It is submitted that recalling of the witness under Section 311 Cr.P.C. is totally to fill up the lacuna in the case of the prosecution, which is not permissible. He submits that prior to summoning under Section 311 Cr.P.C. dated 02.03.2023 and after summoning under Section 311 Cr.P.C. dated 17.01.2025, there are material contradictions in the same. He thus, submits that the trial Court had fallen in error in accepting the application filed under Section 311 Cr.P.C. To buttress his arguments, he relies upon '**Rajaram Prasad Yadav Vs. State of Bihar and another, 2013(3) R.C.R.(Criminal) 726, 'Siddhachit Roy @ Siddhachit Roy Vs. Rabindra Kumar Mallick in CRLREV No.40 of 2022' and 'Raman Kumar Vs. State of Haryana passed in CRM-M-29851-2022'**'.



5. This Court had appointed Mr. S.S. Mor, Advocate as Amicus Curiae to assist the Court on behalf of respondent No.2.

6. Learned Amicus Curiae for respondent No.2, has vehemently opposed the submissions made by learned counsel for the petitioner. He submits that respondent No.2/complainant is a retired Army Personnel, who has been cheated by the petitioner for his hard earned money i.e. for an amount of Rs.7,80,000/-. It is submitted that witness-Anil Kumar was earlier examined as PW-7 and inadvertently he deposed that on 16.02.2011, while he was working in the house of respondent No.2/complainant, then Lakhvir Singh @ Lakha came along with his wife in the house of Amrik Singh and Amrik Singh gave Rs.3 lacs to Parminder Singh. However, he submits that Parminder Singh is son of respondent No.2/complainant and he inadvertently deposed the name as Parminder Singh instead of Lakhvir Singh. He thus, submits that the application has been filed for filling up the lacuna is totally misconceived. He submits that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and can be invoked at any stage of the trial before the pronouncement, if the Court finds that recalling of the witness is for the just decision of the case. He thus, submits that the petition being devoid of any merit deserves to be dismissed.

7. The Court has heard counsel for the parties and perused the record with their able assistance.

8. Evidently, the complainant has filed the FIR against the petitioner on the allegation that he had been cheated by the petitioner for an amount of Rs.7,80,000/- as the petitioner promised that his son would be appointed in the Merchant Navy. Perusal of PW-7 Anil Kumar before



his recalling would show that he had mentioned name of Parminder Singh to whom money had been given, however, admittedly Parminder Singh is son of complainant. The contentions raised by counsel for the petitioner that there are contradictions between the 02 deposition of Anil Kumar i.e. before 02.03.2023 and after 17.01.2025, are totally misconceived as his depositions recorded on 17.01.2025 was not even in place at the time of consideration of the application filed by respondent under Section 311 Cr.P.C.

9. For resolving the issue involved in the present case, the provision of Section 311 Cr.P.C. is necessary which read as under:

“311. Power to summon material witnesses, 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.”

10. From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential to the just decision of the case. However, Hon'ble Supreme Court in the case of *Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328* held as under:-

“12. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for



strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this Section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

11. In the judgment passed in ***Rajaram Prasad Yadav’s case*** (supra) relied upon by the petitioner has laid down the parameters to be considered for the consideration of application under Section 311 Cr.P.C. which is as follows:-

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts



and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.



- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*
- m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*
- n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.*

12. The Hon’ble Supreme Court had specifically laid that the Court should invoke the power under Section 311 Cr.P.C. in order to meet the ends of justice. The contentions raised before this Court that filing of the application amounts to filling up the lacuna, is totally misconceived. The trial Court would appreciate the evidence laid by both the sides. The petitioner has every right to cross-examine the witness summoned even after recalling.

13. Weighing the facts and circumstances of the case, on the anvil of the law settled, this Court do not find any infirmity in the impugned order dated 09.12.2024 and the same is hereby dismissed.

19.09.2025
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(RAJESH BHARDWAJ)
JUDGE

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