



CRR-868-2023

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

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CRR-868-2023

Date of decision: 29.09.2025

Jagjiv Kumar Sharma

....Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Munish Puri, Advocate for the petitioner.

Mr. Amit Goyal, Additional Advocate General, Punjab.

Mr. B.S. Jaswal, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. The petition in hand is a revision petition filed under Section 401/397 of Cr.P.C. laying challenge to order dated 20.03.2023 passed by Sub Divisional Magistrate, Ist Class, Baba Bakala Sahib. Vide the said order, the learned Judicial Magistrate has decided the application under Section 311 Cr.P.C. read with Section 165 of Indian Evidence Act.

At the outset, it is pertinent to note that the instant petition, filed in the form of Criminal Revision Petition, is not maintainable in terms of judgment of the Hon'ble Supreme Court titled as as *Sethuraman versus Rajamanickam; 2009(5) SCC 153*. However, keeping in view the entirety of the factual *milieu* of the case in hand; especially the factum of the instant petition pending adjudication before this Court since March, 2023 and the service having been effected upon the respondents and matter having been taken up before this Court on multiple occasions; this Court is not inclined to decline the petition in hand on account of maintainability alone. *Ergo*, this Court in its inherent jurisdiction directs for considering the petition in hand



as having been filed under Section 482 of Cr.P.C./Section 528 of BNS, 2023.

Now this Court proceeds to decide the petition in hand on merits thereof.

2. Learned counsel for the petitioner has iterated that the impugned order is contrary to both law and the material available on record. Learned counsel has further iterated that the testimony of the witness namely Sunil Kumar Joshi is essential for the just decision of the case as he was the person who has refunded the money to Ms. Ranjana Bhandari. In such circumstances, the testimony of the said witness i.e. Sunil Kumar Joshi is not only material but absolutely essential for the just adjudication of the case. Without his deposition, the defence of the petitioner cannot be fully established. Learned counsel has further contended that the Court below has failed to appreciate the true scope of Section 311 Cr.P.C. as the provision confers wide powers on the Court to summon or recall any person at any stage of the trial if his evidence appears to be essential to the just decision of the case. According to learned counsel, the petitioner cannot be penalized for the deliberate non-cooperation of the witness as once the witness was duly served; it becomes the duty of the Court to ensure his presence by adopting coercive steps as per law. Learned counsel has further submitted that the impugned order is *ex facie* unsustainable in law, being based on mere presumptions and conjectures. It is argued that the reasoning of the Court below that the petitioner was delaying the proceedings is misconceived as the delay, if any, was occasioned only on account of the evasive conduct of the witness. Moreover, the Court below has dismissed the application without properly considering the facts and circumstances of



the case. On the strength of aforesaid submissions, the grant of petition in hand is entreated for.

3. Learned State counsel as well as counsel appearing for the respondent No.2, while supporting the impugned order, has contended that the petitioner has been granted more than sufficient opportunities to examine the witness i.e. Sunil Kumar Joshi. According to learned counsel, the record reflects that from 28.10.2022 till 22.02.2023, several dates were fixed specifically for defence evidence. Furthermore, at least on two occasions, summons to the said witness were returned as duly served, yet instead of producing him, the petitioner himself moved exemptions applications on his behalf. According to learned counsel, the trial has been pending since 2015 and the prosecution concluded its evidence after considerable delay. The matter is now at the stage of final arguments and entertaining application under Section 311 Cr.P.C. at this belated stage would defeat the very object of speedy trial. Thus, the grievance now sought to be raised by the petitioner by way of instant petition is wholly misconceived. Accordingly, the dismissal of the instant petition is entreated for.

4. I have heard learned counsel for the rival parties and have perused the available record.

5. Before further delving into the rival contentions as also the merits of the case in hand, it would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; relevant whereof reads as under:-

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:



- (i) *The prime factor for considering a plea under Section 311 of Cr.P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”*
- (ii) *Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.*
- (iii) *Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.*
- (iv) *A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.*
- (v) *A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.*
- (vi) *Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.*
- (II) *No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances. It is neither possible nor pragmatic to lay down any such exhaustive guidelines as every case is sui generis in terms of factual conspectus.*
- (III) *Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”*

6. The short question that arises for cogitation before this Court is whether the Court below was justified in dismissing the application of the petitioner under Section 311 Cr.P.C. read with Section 165 of the Indian Evidence Act for summoning Sunil Kumar Joshi as a defence witness. Though Section 311 Cr.P.C. empowers the Court to summon any person as a witness or recall and re-examine any person already examined, if his evidence appears to the Court to be essential for the just decision of the case. But at the same time, this discretion must be exercised judiciously to prevent



miscarriage of justice. Furthermore, it is equally settled that the power under Section 311 Cr.P.C. cannot be permitted to be misused for filling up lacunae in the defence.

7. In the instant case, it is not disputed that the petitioner has been granted sufficient opportunities to produce the witness namely Sunil Kumar Joshi. From October, 2022 till February 2023, the matter remained fixed for defence evidence on multiple dates. Summons were issued to the said witness on at least two occasions and were duly served. Instead of producing the aforesaid witness, the petitioner himself moved exemption applications — firstly on the ground that the witness was busy in a political programme and secondly citing illness of the said witness. This conduct itself indicates that the petitioner was aware of the unwillingness of the said witness to appear before the Court. Furthermore, when the Court below on 22.02.2023 permitted recording of testimony of the said witness through video conference, the said witness did not join the proceedings despite the fact that the Court waited till 04:30 PM. In the considered opinion of this Court, the failure of the witness to appear physically or virtually, despite repeated opportunities, cannot be brushed aside as a mere lapse.

8. The contention of the learned counsel that the Court below ought to have taken coercive steps is untenable. Once the summons were duly served and exemption was sought on behalf of the witness by the petitioner himself, there was no occasion for the Court to adopt coercive steps. Rather it was a bounden duty of the petitioner to ensure the presence of his own witness. Having failed to do so despite repeated opportunities, the petitioner cannot now shift the burden upon the Court. Although, the power under Section 311 Cr.P.C. is indeed wide and discretionary but such power



must be exercised judiciously and not in a routine manner especially in the absence of any cogent justification. In the considered opinion of this Court, the Court below has rightly dismissed the application. No illegality or perversity is found in the impugned order warranting interference by this Court. It is borne out from the record that the trial in the instant case is pending since the year 2015. The complainant’s side has consumed more than thirty dates for recording its evidence while the petitioner has already availed nine opportunities for defence. Entertaining application under Section 311 Cr.P.C. at this belated stage would not serve the ends of justice but rather frustrates the mandate of speedy trial. For the foregoing reasons, this Court does not find any error in the impugned order passed by the Court below.

9. In view of the prevenient ratiocination, it is ordained thus:
- (i) The impugned order dated 20.03.2023 passed by the Judicial Magistrate Ist Class, Baba Bakala Sahib, does not call for any interference and the instant petition is hereby dismissed.
 - (ii) Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Court below shall proceed further, in accordance with law, without being influenced therefrom.
 - (iii) Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

September 29, 2025
Ajay

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