



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

130

**CRM-M No.16763 of 2025 (O&M)
Date of decision: 04.04.2025**

Bachan Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Supriya Garg, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking setting aside of order dated 11.10.2024 (Annexure P-11) passed by the learned Sub Divisional Judicial Magistrate, Payal, whereby application filed by the petitioner under Section 348 BNSS (*erstwhile Section 311 Cr.P.C.*) was dismissed, in the case stemming from FIR No. 137 dated 09.08.2017 registered under Sections 427 and 448 IPC at Police Station Doraha, District Ludhiana.

2. Briefly, the facts, as alleged, are that the petitioner and respondent No.2 are brothers and are in a dispute pertaining to property dispute. During the pendency of the same before learned Civil Court, Payal, respondent No.2 and his son trespassed into the house of the petitioner and committed theft of his licensed 12 bore gun, his mobile

2025:PHHC:049321



phone and wallet. They also gave merciless beatings to the petitioner resulting in multiple injuries. Consequently, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner-complainant had moved an application under Section 348 BNSS along with Section 91 of Cr.P.C. before the learned trial Court seeking to place on record other FIRs registered against respondent No.2 at the instance of the petitioner i.e. FIR No.302 dated 27.10.2010 registered under Sections 324, 452, 382, 34 IPC at Police Station Payal, Khanna wherein the petitioner was convicted as well as FIR No.25/2013 registered under Sections 457, 380 IPC at Police Station Doraha, Ludhiana. She submits that the police party had not made these documents a part of the final report, for reasons known best to them. Therefore, the petitioner had also prayed for summoning the concerned Patwari and respective MHCs from Police Stations Payal and Doraha, pertaining to the FIRs mentioned above. Learned Court below has fallen into grave error in dismissing the application of the petitioner vide impugned order dated 11.10.2024 as this material is essential for just decision of the case. Moreover, respondent No.2 is a habitual offender, who has caused harm to the petitioner on multiple occasions. In fact, he has been convicted for the same in FIR No.302 (supra) as well. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***Jamatraj Kewalji Govani vs. State of Maharashtra 1997 SCC OnLine SC 19, Iddar and others vs. Aabida and another (2007) 11 SCC 211 , Varsha Garg vs. State of Madhya Pradesh and others 1997 SCC OnLine SC 19*** and this Court in ***Vijay Kumar vs.***



State of Haryana in CRM-M-17935-2024 decided on 18.04.2024 and Kanwardeep Singh Bhalla vs. Jagdeep Kumar Bedi 2024 SCC OnLine P&H 11671.

4. *Per contra* learned State counsel submits that the petitioner is merely attempting to fill up the lacunae in the case of the prosecution and delay the conclusion of the trial. As such, interference by this Court is not warranted.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the parties are real brothers and have multiple litigations pending between them. In the present case, it appears that the charges were framed on 05.03.2018 and since then, the matter has been fixed for prosecution evidence. However, the application under Section 348 BNSS (*erstwhile Section 311 Cr.P.C.*) was only moved on 13.09.2024. Previously as well, an application under Section 311 Cr.P.C. was moved by the petitioner to summon registry clerk and halqa Patwari along with record, but the same was dismissed vide order dated 12.06.2024 (Annexure P-8). The prosecution has failed to explain the delay in providing evidence, which is curious considering that the same is purported to be essential for just adjudication of the case.

6. Section 348 BNSS (*erstwhile Section 311 Cr.P.C.*) empowers the Court to recall and re-examine a witness or summon a person not originally summoned as a witness, at any stage of inquiry, trial, or proceeding. This discretionary power vested with the Court should be used with caution and prudence and only when compelling

2025:PHHC:049321



and legitimate reasons are indicated. A witness cannot be recall in an automatic, mechanical manner. Such action should only be taken when recalling is necessary to arrive at a just decision. A two judge Bench of the Hon'ble Supreme Court in **V.N. Patil vs. K. Niranjana (2021) 3 SCC 611** examined the scope of Section 311 of Cr.P.C (now Section 348 BNSS) and the following was observed:

“15. 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.”

Further, a Division Bench of this Court in **Sukhdev Singh vs.**

State of Punjab, 1982 Cr. LJ 2201 opined as follows:-

“10. ...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.

2025:PHHC:049321



The anxiety for justice is paramount and 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".

7. In view of the discussion above, this Court is of the considered view that the petitioner is attempting to fill the lacunae in the case of the prosecution by moving an application under Section 348 BNSS (*erstwhile Section 311 Cr.P.C.*). Such an approach cannot be appreciated, especially when respondent No.2 has been facing the agony of trial since the last seven years. On that note, it would be beneficial to refer to the judgment rendered by this Court in ***Vijay Kumar (supra)***, wherein the following observations were made:

"15. If the Court deems production of any documents necessary in order to render substantial and effective justice, it may allow production of the same at any stage of the trial. However, it must be ensured that permitting such evidence is only done after following the drill of the prescribed procedure and not merely at the ipse dixit of either the prosecution or the accused so that no prejudice is caused to the other party. If such an approach is allowed, a party may produce any document at any stage to startle the other party by introducing a new twist or fresh material which would make it well-nigh impossible for the criminal courts to conclude its proceedings and the concept of free and fair trial would get jeopardized. It would also deprive the other party of his right of effective cross-examination. A delicate balance must be struck between the rights of the parties to the trial thus, making a complete divulgence of such evidence an indispensable feature of the right to a fair trial. It is in this context that time and again, Section 207 Cr.P.C. has been held to be mandatory in nature. The accused can only reasonably prepare and defend himself against the charges levied on

2025:PHHC:049321



him if he is made aware of all the incriminating evidence relied upon by the prosecution to prove his guilt.

16. The documents relied upon by the prosecution are brought on record by the investigating agency before the Court concerned by filing the final report under Section 173 Cr.P.C. In the case at hand, the investigation agency has not taken into possession the said material during the investigation. The complainant-respondent No.2 was aware of the existence of the said material from the very inception but, in a most cavalier manner, she only produced it on 01.02.2024 when the prosecution concluded its evidence and the matter was fixed for 07.02.2024 for recording of the statement of the petitioner under Section 313 Cr.P.C. The conduct of the learned trial Court in exhibiting the said document, has virtually disrobed the petitioner of his right to effectively cross-examine the complainant. As such, it is of the utmost importance that if any fresh material is sought to be produced before the Court, the same is done after seeking its permission by making an application under the relevant provisions i.e., either under Section 91, 294, 311 of Cr.P.C. or by investigating agency by filing supplementary report under Section 173(8) Cr.P.C. or by the trial Court under Section 165 of the Indian Evidence Act, 1872. Curiously, the said material was exhibited as Ex. P-37 to Ex. P-39 without any application made to that effect before the learned trial Court. This Court cannot appreciate this approach of the learned trial Court as it is opposed to the scheme of the Cr.P.C.” (emphasis added)

8. Accordingly, the present petition is dismissed being bereft of any merit. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(HARPREET SINGH BRAR)
JUDGE

04.04.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No