



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

118

CRM-M-23922-2025 (O&M)
Date of Decision: 14.05.2025

MANJIT KAUR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Tejbir Singh Hundal, Advocate and
Mr. Jatinder Pal Singh, Advocate for the petitioner.

KIRTI SINGH, J. (Oral)**CRM-19298-2025**

The application is allowed as prayed for. Annexure P-3 is taken on record.

CRM-M-11320-2025 (O&M)

This petition under section 528 BNSS is for setting aside the impugned order dated 16.08.2024 passed by the learned JMIC, Moga whereby the application filed under Section 311 Cr.P.C. was dismissed, and also challenging the impugned order dated 03.04.2025 (Annexure P-2) passed by learned Additional Sessions Judge, Moga, whereby revision against the order dated 16.08.2024 was dismissed.

2. Brief facts of the case are that after investigation in FIR No.193 dated 03.10.2020 under Sections 452, 354-B, 323 and 506 read with Section 34 of IPC, the challan was presented, and the trial commenced before the learned JMIC, Moga. During the prosecution evidence stage, the medico-legal reports (MLRs) of the petitioner, and also of one Baljit Singh, and Kulwant Kaur, which are essential for the fair adjudication of the matter, could not be produced at the time of evidence due to circumstances beyond



their control, as the concerned doctor, Dr. Manpreet Kaur Brar, had moved abroad and thus the prosecution evidence was closed on 06.01.2024. An application was thereafter moved under Section 311 Cr.P.C. to summon the record keeper of the concerned hospital to provide the MLRs, those being material documents essential for the fair adjudication of the case. However, the learned trial Court dismissed the application by order dated 16.08.2024 (Annexure P-1). Revision petition filed against the order dated 16.08.2024 was also dismissed on 03.04.2025. Aggrieved against the said orders the petitioner has approached this Court.

3. Learned counsel for the petitioner *inter alia* submits that while passing the impugned order it has been wrongly observed by the learned trial Court that prosecution had availed more than 22 effective opportunities for their evidence and failed to conclude the same. To support his contention, learned counsel for the petitioner placed on record zimini orders passed in the period between 18.03.2021 to 06.02.2024, submitting that during the said period, many adjournments were sought on behalf of the prosecution. It is further submitted that the ground taken by the learned JMIC and also the Court of learned ASJ while dismissing the application moved on behalf of the petitioner that no useful purpose would be served if the MLRs are allowed to be placed on record since the doctor who had conducted the medical examination could not testify about the contents contained therein, is also untenable since the MLRs are a vital piece of evidence for the prosecution to prove its case. In support of his contentions, learned counsel has placed reliance on the judgment passed by this Court in CRM-M-15433-2018 titled as ***Hanuman Gupta Vs. Snehamayi House Building Cooperative Society Ltd. And others*** decided on 10.11.2022. Reference has also been made to the judgment passed in CRM-M-12425-



2017 titled as ***Karan Singh Vs. State of Haryana and others*** decided on 20.04.2022, wherein also, since the doctor who was the signatory to the MLR and the X-ray report was not traceable, the medical officer was permitted to examine and depose on the basis of the medical records.

4. Notice of motion.

5. Served with an advance copy of the petition, Ms. Guramrit Kaur, DAG, Punjab, accepts notice on behalf of respondent No.1-State. Learned State counsel submits that the learned JMIC dismissed the application filed under Section 311 Cr.P.C. at a belated stage, by observing that placing on record the said documents without examining the concerned witness who could prove the contents contained therein, could cause prejudice to the accused persons since they would be unable to cross-examine the concerned clerk qua the documents. Revision against this order was also dismissed vide impugned order dated 03.04.2025 on the ground that no purpose would be served by permitting the MLR to be placed on record since the doctor who medico-legally examined the injured and could prove the injuries had left for abroad.

6. Before proceeding further it would be apposite to refer to the provisions of Sec 311 which are reproduced herein under :

“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.”

7. The Hon'ble Supreme Court in ***V. N. Patil Vs. K. Niranjan, 2021 (2) R.C.R. (Criminal) 310***, while examining the scope of Section 311 of Cr.P.C observed that:

"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."

8. This principle has also been reiterated in **Swapan Kumar Chatterjee v. Central Bureau of Investigation, 2019(14) SCC 328**, the relevant paras of which read thus:

"11. 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 vide power under this section to even recall witnesses for reexamination 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."

9. Thus, what flows from the above observations of the Hon'ble Supreme Court is that Section 311 Cr.P.C., though must be exercised cautiously, provides for calling of witnesses or documents at any stage of an inquiry, trial or other proceedings under Cr.P.C. in order to meet the ends of justice. The objective behind the power contained in the provisions is to ensure that all essential evidence necessary for deciding a case are brought on record, and are not missed out due to mistake of any party.

10. Adverting to the case at hand, a perusal of the impugned order reveals that what appears to have weighed predominantly with the learned Courts below, while dismissing the application under Section 311 Cr.P.C., was the circumstance that the prosecution had already availed 22 effective opportunities to lead evidence. However, the mere number of opportunities availed cannot, in and by itself, constitute a sound basis for rejecting an application under the said provision, if the nature of the evidence sought to



be adduced is material to the just adjudication of the case. The foundational premise underpinning Section 311 Cr.P.C. is that a criminal Court is not a passive bystander in the trial process; it is, rather, an active participant invested with wide discretion to summon any witness, at any stage of the proceedings, if such witness appears to be essential for arriving at a just decision. The Court's duty transcends procedural technicalities, and its primary obligation is to ensure that the truth is not obscured for want of relevant evidence. In the instant matter, the Courts below appear to have overlooked that, in view of the non-availability of the doctor who had medically examined the injured and has since moved abroad, the record-keeper of the concerned medical institution would have been a competent and material witness in providing the MLRs during the course of trial. Denial of such opportunity on the anvil of procedural rigidity runs contrary to the spirit and object of Section 311 Cr.P.C., which mandates the Court to summon or recall witnesses whose testimony may be imperative for a just and fair decision in the matter.

11. In light of the foregoing discussion and in view of the judgments referred to herein-above, the present petition is allowed and impugned orders dated 16.08.2024 and 03.04.2025 (Annexures P-1 & P-2) are hereby set aside.

13. Pending miscellaneous application(s), if any, also stands disposed of.

14.05.2025

Kavita

Whether speaking/reasoned
Whether reportable

(KIRTI SINGH)
JUDGE

Yes/No
Yes/No