



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 24.04.2025

1. CRM-M-36082-2024 (O&M)

Virender Mohan Kaushal

....Petitioner

Versus

Jagdish Singh

....Respondent

2. CRM-M-36281-2024 (O&M)

Virender Mohan Kaushal

....Petitioner

Versus

Jagdish Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manoj Pundir, Advocate
and Mr. Puneet Munjal, Advocate
for the petitioner (in both the cases).

HARPREET SINGH BRAR J. (Oral)

CRM-16121-2025 in CRM-M-36082-2024
CRM-15990-2025 in CRM-M-36281-2024

Prayer in both the instant applications filed under Section
528 of BNSS, 2023 is for placing on record the document as Annexure
P-5.

Allowed as prayed for subject to all just exceptions.

CRM-M-36082-2024 (O&M)
CRM-M-36281-2024 (O&M)

1. Vide this common order, I intend to dispose of CRM-M
Nos.36082 and 36281 of 2024, as common questions of law and facts

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are involved for adjudication. For the sake of convenience, facts are taken from CRM-M-36082-2024.

2. Prayer in both these petitions filed under Section 528 of BNSS, 2023, wrongly mentioned as 428 of BNSS (erstwhile Section 482 Cr.P.C.) is for quashing the impugned order dated 05.06.2024 (Annexure P-4) in CRM-M No.36082-2024 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri vide which the application filed by the petitioner (Annexure P-2) for leading additional evidence, has been dismissed and for quashing the impugned dated 05.06.2024 (Annexure P-4), in CRM-M No.36281 of 2024, whereby application under Section 311 Cr.P.C., for recalling the complainant to cross-examine him, has been dismissed.

3. Learned counsel for the petitioner submits that the additional evidence being sought by the petitioner is not only relevant but essential for ensuring a fair and just decision of the case as this evidence directly challenges the complainant's claim about a transaction taken place on 16.01.2016. While the complainant stated in cross-examination that the payment was made through someone named Rajesh, however, the official bank records reflect a different story that the money was actually withdrawn by one Jatin Kumar son of Chander Parkash, and interestingly, both are involved in other similar complaints filed by the same complainant. It appears that the complainant has filed several cases related to same financial transaction, without clearly mentioning dates, which raises serious doubts about the genuineness of



his claims. The petitioner, through an application under Section 311 Cr.P.C., only seeks to bring clarity to these contradictions with the help of factual records by producing the testimony of relevant witnesses, however, the learned trial Court dismissed the application filed by the petitioner under Section 311 Cr.P.C. vide impugned order dated 05.06.2024.

4. Having heard learned counsel for the petitioner and after perusing the records, it transpires that the evidence sought to be produced, particularly the bank withdrawal details, call records, and testimony of concerned officials, goes to the root of the matter and may substantially impact the assessment of the complainant's version regarding the alleged transaction. The production of said evidence 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 2022 (4) R.C.R(Criminal)***.

5. The principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India and any denial of the best available evidence or opportunity of effective and substantial hearing to accused in proving his defence would amount to denial of free and fair trial.

6. A two judge Bench of the Hon'ble Supreme Court in ***V.N. Patil Vs. K. Niranjana Kumar (2021) 3 SCC 661*** examined the scope of the power under Section 311 of Cr.P.C and following was observed:-



“15. The 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 still, a two Judge bench of the Hon’ble Supreme Court In ***Rajaram Prasad Yadav Versus State of Bihar & another, 2013(3) R.C.R. (Criminal) 726***, speaking through Justice Fakkir Mohamed Ibrahim Kalifulla, the following was opined:

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- 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 Criminal Procedure Code 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 Criminal Procedure Code 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*

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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 Criminal Procedure Code 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. The power under Section 311 Criminal Procedure Code 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.”

7. Additionally, a two Judge bench of the Hon’ble Supreme Court in ***Mohanlal Shamiji Soni Versus Union of India & another, 1991(3) R.C.R.(Criminal) 182***, speaking through Justice S. Ratnavel Pandian, the following was held:

“27. The principle of law that 'emerges from the views expressed by this court in the above decisions is that the Criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.” (emphasis supplied)

Further, a Division Bench of this Court in ***Sukhdev Singh vs. State of Punjab 1982 Cr. LJ 2201*** has held that:-

“4. ...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

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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 ex improviso 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 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".

8. In view of the discussion above, both the present petitions are allowed and the order(s) dated 05.06.2024 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, are set-aside. The petitioner is granted two effective opportunities to cross-examine the complainant and to lead additional evidence as prayed in the application filed under Section 311 Cr.P.C., before the jurisdictional Court.

9. This will, however, be subject to payment of costs of Rs.5,000/- to be paid by the petitioner to the complainant.

10. Pending miscellaneous application(s), if any, also stand(s) disposed of.

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11. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

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