



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

122

**CRR-1556-2025 (O&M)
Decided on : 03.07.2025**

Karam Singh and another

. . . Petitioner(s)

Versus

State of Punjab and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Vikas Bali, Advocate
for the applicant-petitioner.

SANJAY VASHISTH, J. (Oral)

CRM-24637-2025

I. This is an application filed u/s 528 of BNSS, 2023, seeking preponement the date of hearing in the main case i.e. CRR-1556-2025 from 24.07.2025 to an early date.

II. In view of the averments made in the application, which is duly supported by an affidavit, the date of hearing in the main case is advanced from 24.07.2025 to today itself, i.e., 03.07.2025.

III. CRM stands disposed of.

CRR-1556-2025

1. In view of the orders of even date passed in CRM-24637-2025, main case is taken up for hearing today itself.

2. Petitioners – Karam Singh and Jaswant Singh, who are facing trial in case FIR No. 200, dated 21.07.2017, under Sections 420, 467, 468, 471 of IPC, registered at Police Station City Khanna, District Ludhiana, have challenged the order dated 04.06.2025, passed by learned Judicial Magistrate Ist Class, Khanna, whereby, application dated 21.05.2025, filed by the

prosecution, under Section 311 Cr.P.C., has been allowed.

3. An application under Section 311 read with Section 91 Cr.P.C. was filed with a prayer to summon the witness — Harpreet Kaur d/o Amarjeet Singh, to enable prosecution to submit the certificate under Section 65B of the Indian Evidence Act, 1872 (now Bharatiya Sakshya Adhiniyam, 2023) along with the judgment dated 08.01.2024, in order to prove its charges.

By filing reply to the said application, prayer of the prosecution was objected by the accused, because case is at the final stage and is fixed for arguments. It has been contended in the reply that defect is incurable, because it would amount the filling up of lacuna by presenting evidence at this stage.

4. For allowing the prayer, prosecution explained its position that for proving of the charges, one CD has been relied upon by it. However, same requires to be proved with the help of a certificate under Section 65B of the Indian Evidence Act (now Section 63 of BNSS, 2023).

5. On the basis of the evidence, one Karam Singh, has already been convicted in FIR No.28, dated 21.03.2014, u/s 419 and 420 of IPC, by the court of learned Sub-Divisional Judicial Magistrate, Payal, vide judgment dated 08.01.2024. Thus, copy of the said judgment and certificate u/s 65B of the Indian Evidence Act, are required to be brought on record to prove the charges levelled by the prosecution.

6. On the other hand, learned counsel for the accused (petitioner herein) opposes the application by relying upon the judgment of this Court in Shiv Lal @ Sholly v. State of Punjab, 2018(2) Law Herald 1408 (SB) : Law Finder Doc Id #1067457. It is contended that the prayer made by the

prosecution is highly belated and intended merely to delay the proceedings. It is submitted that even arguments in the case had already commenced by the time the application was moved, and allowing such application at this stage, may cause prejudice to the accused by enabling the prosecution to fill up lacunae in its case, potentially resulting in a *de novo* trial. Thus, dismissal of the application is sought.

7. Heard.

8. **SUM AND SUBSTANCE OF THE DISPUTE IN THE REFERRED CASE IS AS UNDER:-**

- (i) Judgment relied upon by the petitioner's counsel pertains to a murder case in which one 'Bhim Tank' was deceased and injuries were suffered by 'Gurjant Singh'. In that case, Ranjit Singh, brother of the injured, lodged the complaint/FIR without naming any accused, namely; Shiv Lal @ Sholly. Later, on the same day, a supplementary statement was recorded wherein Shiv Lal @ Sholly was implicated as a conspirator. Statements of injured Gurjant Singh (dated 17.12.2015) and Akash (dated 21.12.2015), along with Kaushalya Devi's statement were recorded on the same day and also named Shiv Lal @ Sholly as one of the accused. However, after a polygraph test on 29.02.2016, he was declared innocent, and in the final report filed on 12.03.2016, Shiv Lal @ Sholly was not named as an accused.
- (ii) Subsequently, during trial, Sunil Kumar (brother of deceased) in his deposition on 15.03.2016 named Shiv Lal @ Sholly, leading to a supplementary challan against him on 17.04.2016, and

evidence commenced on 01.09.2016.

The controversy arose when an application under Section 311 Cr.P.C. was filed by Kaushalya Devi through the Public Prosecutor to summon Akash as a witness. In the status report dated 07.04.2017, the police did not mention Akash as a witness, and Kaushalya Devi's own earlier statement dated 12.01.2017 was silent about Akash. However, on 04.03.2017, she moved an application under Section 311 Cr.P.C. appending Akash's alleged statement recorded Section 161 Cr.P.C. In cross-examination, PW9 Harjeet Singh, SSP, candidly admitted that no such statement of Akash existed in the police records.

Thus, issue before the Single Bench of this Court was in regard to the relevancy of the summoning of said Akash, as a witness in the case.

- (iii) Considering all the circumstances, which were there in the record of the police and also in the form of evidence before the Court, order passed by trial Court, allowing the application u/s 311 Cr.P.C., for summoning of the witness Akash, was set-aside by the High Court in its revisional jurisdiction, exercised in the revision petition filed by Shiv Lal @ Sholly, who was made accused by submitting supplementary challan.

9. To the view point of this Court, facts and circumstances, noticed in the referred case are not applicable to the case in hand, because, Kaushalya Devi in her own statement had not stated anything about the fact that Akash is the witness against Shiv Lal @ Sholly for proving him a conspirator. This aspect was missing in the status report filed by the police and even in

the cross-examination, witness PW9 – Harjeet Singh, SSP, clearly admitted that no statement of the Akash was recorded in the police record. Thus, question was in regard to the existence of the evidence and same was held to be non-existent as per record.

Therefore, referred case is not at all applicable to the facts and other circumstances of present case, *qua* the issue involved herein.

10. For reference, Section 311 Cr.P.C. (Section 348 of BNSS, 2023), is reproduced here-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 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.”

11. Legislation enacted the said provision as an enabling power of the trial Court for summoning of any kind of evidence of its nature, and in any form, if such evidence appears the Court to be “*essential to the just decision of the case*”. Power is to be exercised entirely to the satisfaction and discretion of the Court.

12. In the present case, petitioner has not addressed anything by which, it could be understood that accused would suffer any prejudice with the production of the evidence, which in fact already exists on record and same is not to be created afresh now. Vide Judgment dated 08.01.2024, learned SDJM, Payal, had already convicted the accused Karam Singh and certificate u/s 65B of the Indian Evidence Act, would only authenticate the

existing evidence in the form of C.D. which is already there on record. Therefore, in no manner, it would amount filling up lacuna by creating a fresh evidence, to ensure conviction of the accused.

Prime consideration is to look the requirement of such evidence for a qualitative final decision of the case, which ultimately may go either side.

13. Scope of power of the Court u/s 311 Cr.P.C. has already been deal with by the courts more than once. In one of the judgment, i.e., in Varsha Garg v. The State of Madhya Pradesh & Ors., 2022(4) RCR (Criminal) 328 : Law Finder Doc Id # 2022122, the Apex Court held as under:-

“28. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine section 311 of CrPC, 1973. Section 311 provides that the Court "may":

- (i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and*
- (ii) Recall and re-examine any person who has already been examined.*

This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court 'shall' summon and examine or recall and reexamine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

29. The first part of the statutory provision which uses the expression 'may' postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression "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". Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory.

30. A two judge Bench of this Court in Mohanlal Shamji Soni (supra) while dealing with pari materia provisions of Section 540 of the Criminal Code of Procedure 1898 observed:

"16. The second part of Section 540 as pointed out albeit imposes upon the court an obligation of summoning or recalling and re-examining any witness and the only condition prescribed is that the evidence sought to be obtained must be essential to the just decision of the case. When any party to the proceedings points

out the desirability of some evidence being taken, then the court has to exercise its power under this provision - either discretionary or mandatory - depending on the facts and circumstances of each case, having in view that the most paramount principle underlying this provision is to discover or to obtain proper proof of relevant facts in order to meet the requirements of justice."

Justice S. Ratnavel Pandian, speaking for the two judge Bench, noted that the power is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which it can be exercised or the manner of its exercise. It is only circumscribed by the principle that the "evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means." In that context the Court observed:

"18 ..Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties."

31. *Summing up the position as it obtained from various decisions of this Court, namely **Rameshwar Dayal v. State of U.P. (1978) 2 SCC 518, State of W.B. v. Tulsidas Mundhra (1963) Supp 1 SCR 1, Jamatraj Kewalji Govani v. State of Maharashtra (1967) 3 SCR 415, Masalti v. State of U.P. (1964) 8 SCR 133, Rajeswar Prosad Misra v. State of W.B. (1966) 1 SCR 178 and R.B. Mithani v. State of Maharashtra (1971) 1 SCC 523**, the Court 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."

32. *The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest. 33. section 91 CrPC, 1973 empowers inter alia any Court to issue summons to a person in whose*

possession or power a document or thing is believed to be, where it considers the production of the said document or thing necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the CrPC.”

14. In view of the aforementioned discussion, and after examination of the record, this Court does not find any reason to cause interference in the well reasoned order.

Accordingly, order impugned herein is maintained and instant criminal revision petition is hereby **dismissed**.

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

(SANJAY VASHISTH)
JUDGE

July 03, 2025
J.Ram

Whether speaking/reasoned: √ Yes/~~No~~
Whether Reportable: √ Yes/~~No~~