



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

(125)

**CRM-M-34030-2025
Date of Decision: 04.7.2025**

Jugraj Singh @ Jagraj Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Lovish Arora, Advocate
for the petitioner.

KIRTI SINGH, J. (ORAL)

1. The instant petition has been filed against the impugned order dated 27.5.2025 (Annexure P-7) passed by the learned Judicial Magistrate Ist Class, Moga, in case FIR No. 134 dated 24.12.2019 under Sections 406 and 498-A IPC, registered at Police Station Ajitwal, District Moga, whereby an application preferred by the prosecution under Section 311 Cr.P.C. (348 of BNSS) has been allowed and examination of PW Meenu Bala has been permitted.

2. Learned counsel for the petitioner *inter alia* submits that the learned trial Court concerned has erred in allowing the instant application as it is apparent from the record that 51 effective opportunities were granted to the prosecution to examine its witnesses. However, the prosecution deliberately has not examined Meenu, who was cited as a witness at Sr. No. 2 in the list of witnesses. It is further contended that the instant application filed by the prosecution is in utter abuse of process of law. Moreover, the same has been filed by the prosecution after recording of the statement of the petitioner under Section 313 Cr.P.C. only



in order to delay the proceedings and fill up the lacuna.

3. Notice of motion to the State-respondent No. 1 only at this stage.
4. Mr. Tarun Aggarwal, Addl. A.G., Punjab waives service of notice on behalf of the respondent-State.
5. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments advanced by the learned counsel for the petitioner. The present petitioner is decided in *limine* in order to save litigation cost of the respondent and also to save the judicial time of the Court.
6. Before proceeding further, it would be apposite to refer to the provisions encapsulated in Section 311 Cr.P.C. The provisions are extracted hereinafter:

“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 of India in ***K.P.Tamilmaran***’s case (supra) has observed as under:-

“X X X X

47. *Before moving further, we consider it necessary to deal with the law relating to Section 311 Cr.P.C. under which PW-49 was summoned as a witness.*

Section 311 Cr.P.C. reads as follows:

“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.”

This Section 311 of Cr.P.C. provides wide powers to a Criminal Court, to do the following:

- i. Summon any person as a witness, or*
- ii. Examine any person present in court, though not summoned as witness, or*
- iii. Recall and re-examine any person already examined.*

The above powers can be exercised ‘at any stage of any inquiry, trial or other proceeding’ under the Cr.P.C.. The provision can be divided into two parts. The word ‘may’ is used in the first part of the section which grants the Court the discretion to summon a witness. In contrast, the second part of the Section uses the word ‘shall’ which casts a duty on the Court to summon and examine or recall or re-examine any such person as a witness when it appears to the Court that it is essential to do so for a just decision in the case. In other words, the second part is mandatory, and Courts are obligated to exercise their powers under Section 311 Cr.P.C. when the evidence of any person is essential for a just decision of the case. (See: Jamatraj Kewalji Govani versus State of Maharashtra 1967 SCC OnLine SC 19).

48. As is clear from the language of the provision itself, there is a wide discretion with the Courts under Section 311 Cr.P.C. These powers can be exercised suo moto or on an application moved by either side. After all, the object is that the Court must not be deprived of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination. This power under Section 311 Cr.P.C. can be invoked at any stage of the trial, even after the closing of the evidence. Section 311 Cr.P.C. can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 Cr.P.C.. As discussed above, powers under Section 311 Cr.P.C. can either be exercised on an



application moved by either side to the case or suo moto by the Court. In case a person is not listed as a witness in the charge-sheet but later, the prosecution desires to bring that person as an additional prosecution witness, then the prosecution can move an application to bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc. would follow as per the procedure. On the other hand, when the Court calls a person as a Court witness, there are some restrictions regarding the cross-examination of such witness.”

8. The Hon'ble Supreme Court, in **V. N. Patil Vs. K. Niranjan**, reported in **2021 (2) R.C.R. (Criminal) 310**, while examining the scope of Section 311 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."

9. This principle has also been reiterated in **Swapan Kumar Chatterjee v. Central Bureau of Investigation**, reported in **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."

10. The operative part of the impugned order, carried in paragraph 3 is reproduced hereinafter.

"Heard. Record perused. Section 348 BNSS confers upon the court the power to 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 if his evidence appears to be essential for the just decision of the case. Such power can be exercised at any stage before passing of the final order. Witness Meenu Bala is cited as the victim of this case but she was not examined. So, evidence of this witness is very material for the just decision of this case. However perusal of file shows that present case remained pending for prosecution evidence from 02.04.2022 till 27.02.2025. The complainant is father of victim Meenu Bala and he has appeared and was also examined. No effort was made by the complainant or the prosecution to examine victim during long span of 02.04.2022 till 27.02.2025 either in person or through VC and the application is moved at belated stage when case was fixed for defence evidence. Both prosecution and complainant should have been vigilant when time and again it was brought to their notice that case has become old and fall in category of action plan. However, as evidence of victim is necessary for just decision of case and as no prejudice would be caused to the accused if the present application is allowed, subject to cost of Rs. 5000/- to be deposited by prosecution for causing delay in trial of present Case. Cost be deposited in DLSA."

11. A perusal of the above would reveal that the complainant who is the father of the victim has been examined. However, the victim concerned, who was a material witness and was a cited as a prosecution



witness could not be examined despite the fact the case remained pending for a long span i.e. from 2.4.2022 till 27.2.2025 for recording of the prosecution witness. Therefore, since the evidence of the above witness is essential to bring forth the complete truth, thereby ensuring that the trial culminates into a just and equitable outcome. Resultantly, the learned trial Court concerned, has rightly exercised its power in allowing the present application, even at an advanced stage of the trial, to unearth the truth.

12. The foundational premise underpinning Section 311 Cr.P.C. is that the Court is not a passive bystander in the trial process, rather is 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 trances procedural technicalities and its primary obligation is to ensure that truth is not obscure for want of relevant evidence.

13. Therefore, this Court is of the considered view that the impugned order when viewed from the prism of interest of justice, does not suffer from any infirmity or any vice of illegality. The same being speaking, well reasoned and based upon correct appreciation of facts needs no interference.

14. In consequence, the present petition stands dismissed.

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

(KIRTI SINGH)
JUDGE

July 04, 2025
Gurpreet Singh

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