



\$~69

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2960/2025 & CRL.M.As. 13189/2025, 13190/2025
SH. SANJEEV RAJ GOELPetitioner

Through: Mr. Somak Mukhopadhyay,
Advocate.

versus

AJAY PAL SINGHRespondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **01.05.2025**

1. The present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly, Section 482 of the Code of Criminal Procedure, 1973²) seeks quashing of order dated 27th February, 2025 passed by JMFC (NI Act)-01 Central District, Tis Hazari Courts in CC Case No. 11049/2018 titled *Ajay Pal Singh v. Sanjeev Raj Goel*. By the said order, Petitioner's application under Section 311 Cr.P.C seeking permission to summon a bank witness for leading additional evidence was rejected. The impugned order reads as follows:

"Vide this order, this court shall dispose of an application dated 12.11.2024 under Section 311 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') moved on behalf of the accused.

CONTENTION OF THE: PARTIES

1 *Ld. Counsel vide this application has submitted that while preparing for 1 final arguments, he found out that he inadvertently closed the defence evidence without summoning the bank witness*

¹ "BNSS"

² "Cr.P.C"



who would have proved Ex. DW-1/5 which pertains to stop payment instructions issued to his banker by the accused. Therefore, one opportunity be granted to the accused to correct his bonafide error by permitting him to examine bank witness from Oriental Bank of Commerce to prove Ex. DW-1/5. Reliance is placed on *Zahira Habibullah Sheikh Vs. Siale of Gujarat* (2006) 2 SCC (Crl) 8 and *Manu Dev Vs. XXX and Anr.*

- 2 *Per contra, Ld. Counsel for complainant vide his written reply rebutted the present application by submitting that accused was already in possession of the said document and he himself has closed his defence evidence. Also, the accused cannot be allowed to fill his lacunae. Hence, dismissal of the present application is prayed for. Reliance is placed on *Electronics Trade & Technology Development Corpn. Ltd., Secunderabad Vs. Indian Technologies & Engineers (Electronics) Pvt. Ltd. and Ors.**
3. *The court has heard the arguments as put forth by Ld. Counsel for both the parties and has perused the contents of the present application and has also gone through the case file.*
- 4 *Section 311 Cr.P.C is reproduced below for reference:*

“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.”

INTERPRETATION OF PROVISION

- 5 *The provision of 311 Cr.P.C. enables the court to render just decision of case by determining the truth after considering all the relevant facts and circumstances. The wide discretionary powers given under the said section must be exercised judiciously and not arbitrarily. Moreover, the true test for exercising power under said provision is “essentiality of evidence” i.e. if evidence is essential to the just decision of case, power should ordinarily be exercised. However, at the same time, application under Section 311 Cr.P.C must not be allowed to fill lacuna in the case of prosecution or defence or to cause serious prejudice to opposite party or his defence.*
- 6 *In die present factual matrix, accused has filed an application to grant him an opportunity to lead further defence evidence. As per the application, accused inadvertently closed the defence evidence without summoning the bank witness who would have proved Ex.*



- DW-1/5 which pertains to stop payment instructions issued by him to his banker.*
- 7 *Perusal of the record shows that matter was fixed for DE on 24.07.2023. DW1 accused was examined in chief on 29.08.2023, wherein the witness produced copy of letter instructing the bank to stop payment of the cheques in question. The same was marked as Ex. DW-1/5. It is thus evident that the said document was already within the knowledge of the accused. Thereafter, on 04.05.2024, vide separate statement of accused. DE was closed and the matter was fixed for final arguments. As per the said statement, accused closed his defence after consultation with his counsel.*
- 8 *It is pertinent to mention that the matter was fixed for final arguments on 01.06.2024, 11.07.2024 and 06.09.2024. Thereafter, this application was filed on 12.11.2024.*
- 9 *It is thus clear that no new tael has come up after the closing of DE on 04.05.2024, in furtherance of the statement given by the accused. The document that is being sought to be proved by summoning the bank witness was already in the possession of the accused.*
- 10 *In view of the abovesaid reasons, this court finds that the application moved on behalf of the accused is devoid of merits and is liable to be dismissed.*
- 11 *Moreover, sufficient opportunities have already been granted to the accused to lead DE and this court is not inclined to grant any opportunity to the accused for the examination of bank witness.*
- 12 *Thus, in view of contextual facts and above-mentioned discussion, this application u/s 311 Cr.P.C. filed by accused stands **dismissed**.*
- 13 *Nothing mentioned in the present order shall be construed as an opinion on the merit of the case.*
Accordingly, application stands disposed of."

2. Counsel for Petitioner submits that the impugned order is unsustainable in law as the Trial Court failed to appreciate that the defence evidence was closed inadvertently, without examining the bank witness which is necessary to prove Exhibit DW1/5, a document that would demonstrate that the Petitioner had issued stop payment instructions to his bank. It is argued that the cheque in dispute was returned due to "payment stopped by drawer" and the bank had issued a certificate to this effect, indicating that the Petitioner had initiated the stop payment through online



instructions. Therefore, it is submitted that summoning the bank witness is necessary to formally prove the document, in the interest of justice.

3. Court has considered the afore-noted facts and submissions. It is not in dispute that the Petitioner, on 4th May, 2024, made a categorical statement before the Trial Court, closing his defence evidence after due consultation with his counsel. The matter was thereafter listed for final arguments on multiple dates. The application under Section 311 Cr.P.C. seeking recall or summoning of a bank witness was filed more than six months later, on 12th November, 2024. The Petitioner has sought to justify this delay on the ground that his counsel inadvertently closed the evidence without examining the bank witness. This explanation, however, does not inspire confidence. The record clearly reflects that the decision to close defence evidence was not casual, but a deliberate one. By invoking Section 311 of Cr.P.C, the Petitioner cannot fill in the lacunae in the evidence, particularly since the matter has progressed substantially and has reached the stage of final arguments.

4. Further, the Petitioner was admittedly in possession of the document in question, Exhibit DW1/5, at the time of his examination in chief. The said document, being a copy of the letter purportedly sent to the bank to issue stop payment instructions, was already placed on record. The Petitioner had ample opportunity at that stage to summon the concerned bank official to prove the document, if their evidence was essential. His failure to do so cannot be attributed to inadvertence alone, and no new facts have emerged since the closure of evidence that would necessitate the recall or summoning of any additional witness.



5. In *Natasha Singh v. CBI*,³ the Supreme Court observed that the Section 311 Cr.P.C empowers the Court to summon a material witness if the evidence sought to be led is essential to render a just decision. The Supreme Court further observed that the discretionary power must be exercised with caution, and only where the additional evidence is germane to the issue involved. In the present matter, the returning memo already states that the cheque was dishonoured due to “stop payment instructions”. This is a matter of record. Summoning a bank witness to formally depose to the same effect would serve no substantive purpose and cause unnecessary delay in the proceedings.
6. In light of the foregoing reasons and the legal position governing the exercise of discretion under Section 311 Cr.P.C., this Court is of the view that no case for interference has been made out.
7. Dismissed, along with pending applications.

SANJEEV NARULA, J

MAY 1, 2025

d.negi

³ (2013) 4 SCC (CrI) 828