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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5139/2025 & CRL.M.As. 22266-22267/2025**
CHANDER VIBHASHPetitioner

Through: Mr. D.P. Singh, Senior Advocate with
Ms. Sonam Gupta, Mr. Saumay
Kapoor, Mr. Shiva Pande and Mr.
Digvijay Singh, Advocates.

versus

STATE NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh, APP.
Inspector Mukesh Meena, P.S. Hari
Nagar.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
01.08.2025

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1. The present petition filed under Section 528 of the Bharatiya Nyaya Suraksha Sanhita, 2023¹ assails Trial Court's order dated 29th July, 2025² in SC No. 57453/2016 allowing State's application under Section 311 of the Code of Criminal Procedure, 1973³ seeking to bring on record the Call Detail Records,⁴ Location Chart along with its Customer Application Forms⁵ and requisite certificate pertaining to certain mobile numbers. The operative portion of the impugned order reads as follows:

"Court's Observation

6. *This Court heard the rival submissions advanced on behalf of Ld.*

¹ "BNSS"

² "the impugned order"

³ "Cr.P.C"

⁴ "CDRs"

⁵ "CAFs"



Addl. PP for the State and Ld. Counsel for non-applicant/accused and perused the entire material available on record.

7. As per the chargesheet, during investigation the IO Inspector Harpal served notice under Section 91 Cr. PC to the respective service providers of said mobile numbers. However, the same was not brought on record. During the course of arguments, present IO/Inspector Ashu Girotra has submitted that the record was received in the PS but it was not traceable, hence, fresh record was received from the service providers vide separate application and part record has already been received, which is lying in the police file now.

8. The prosecution evidence was closed vide order dated 31.05.2023, however, the said documentary evidence was not filed on record, though notice for producing the same was given to the service providers by the IO and it has been specifically mentioned in the chargesheet that the same shall be filed as and when produced. Therefore, it is not an evidence which has been introduced at this stage for the first time.

9. Further, the record reveals that the evidence requested to be brought on record by the prosecution in form of Call Details Record, Location Chart along with its CAF and requisite certificate, is **most vital piece of evidence in the present matter as it is electronic evidence, which can be a connecting link of chain of circumstances in order to elicit the truth and just decision of the case** as there is no eye witness of the alleged incident and the entire case of the prosecution is based on circumstantial evidence.

10. With this background, keeping in mind the rationale behind Section 311 Cr. PC as observed by Superior Courts in aforesaid judgments, this Court is of the considered opinion that the present application deserves to be allowed partly with respect to record of three mobile phones already in the possession of prosecution. Accordingly, the present application is allowed with directions that the witnesses mentioned in the supplementary application i.e. Nodal Officers, Airtel, Vodafone and Reliance company be summoned in order to prove the aforesaid evidence along with requisite certificate, for the next date of hearing. Present IO/Inspector Ashu Girotra be also summoned for the next date of hearing.

11. Put up for prosecution evidence on 02.08.2025.”

2. Mr. D.P. Singh, Senior Counsel for the Petitioner, contends that the impugned order suffers from perversity. His submissions are as follows:

2.1. The chargesheet was filed as far back as 21st December, 2011. Over the last 14 years, the prosecution has examined 28 witnesses and 1 court



witness. The prosecution evidence stood closed on 31st May, 2023. Thereafter, statement of the accused under Section 313 of Cr.P.C was recorded and even the defence evidence was concluded.

2.2. On 15th January, 2025, final arguments on behalf of the defence (the Petitioner herein) commenced, especially since the prosecution had chosen not to address oral arguments. The matter was adjourned to 24th January, 2025 for continuation. However, on the said date, the prosecution moved its first application under Section 311 of Cr.P.C, seeking to place on record a certificate under Section 65B of the Indian Evidence Act, 1872 relating to toll plaza records. This application was rejected by the Trial Court on 4th July, 2025.

2.3. Thereafter, on 10th July, 2025, the matter was once again taken up for final arguments. But on 14th July, 2025, the prosecution filed a second application under Section 311 of Cr.P.C, seeking to introduce the CDRs and CAFs of the accused, the deceased and her parents, along with a prayer to summon the Nodal Officers of the respective telecom service providers.

2.4. Subsequently, a third application was moved on 24th July, 2025, supplementing the second application and seeking to summon additional witnesses, namely: (i) Nodal Officers of Airtel, Vodafone, and Reliance, (ii) the SHO of PS Hari Nagar, and (iii) PW-4, Nibha Saha, mother of the deceased. The said application was accompanied by an analysis report which indicated that the original records could not be traced from the record room and had to be again obtained from the respective telecom providers.

2.5. Permitting the prosecution to introduce such documents at the final stage of trial, after the closure of evidence and commencement of arguments, filling the lacuna in the prosecution's case and is impermissible



Section 311 of Cr.P.C does not empower the Court to permit introduction of fresh documentary evidence at such an advanced stage. Furthermore, the documents now sought to be introduced were neither furnished to the accused during trial nor subjected to the rigours of proof in accordance with law.

3. The Court has considered the afore-noted facts and submissions. The impugned order emanates from an FIR relating to an offence under Section 302 of the Indian Penal Code, 1860. The chargesheet discloses that, during the course of investigation, the Investigating Officer had issued notices under Section 91 of Cr.P.C to the concerned telecom service providers seeking the CDRs and CAFs of the relevant mobile numbers. However, owing to an inadvertent omission by the earlier Investigating Officer, the said documents were not brought on record.

4. The Trial Court has noted that Investigating Officer, Inspector Ashu Girotra, has procured the records afresh, after it was discovered that the original set of documents could not be traced from the police file. The documents pertain to three mobile belonging to the accused, the deceased, and the deceased's father, each of which has already been referred to in the chargesheet. Thus, these documents sought to be produced do not constitute entirely new evidence but are in continuation of the material already referred to during investigation. They cannot, therefore, be regarded as new or additional evidence introduced for the first time at the final stage.

5. Moreover, the CDRs, Location Charts, and CAFs constitute electronic evidence of a nature that is often crucial in cases built on circumstantial evidence. As correctly noted by the Trial Court, such material could prove to be a vital link in establishing the sequence of events or the presence of the



parties involved, thereby facilitating a more just adjudication of the case.

6. It is well-settled that Section 311 of Cr.P.C vests the trial court with broad discretion to summon any person as a witness, or to recall and re-examine any such person already examined, at any stage of the trial, if such evidence appears essential for a just decision. The closure of prosecution evidence does not impose a rigid bar on the exercise of this jurisdiction. The Supreme Court has time and again held the participatory role of the trial court and emphasised that the presiding judge is not a mere recording device but must remain vigilant of the task of eliciting relevant information from a witness, particularly in situations where the prosecution is found wanting.⁶ The Trial Court must not adopt an indifferent or aloof stance where the prosecuting agency has faltered, for doing so would compromise the fairness of the judicial process itself. Thus, the object of Section 311 of Cr.P.C is to prevent a failure of justice arising from the inadvertent omission to bring valuable evidence on record. The provision is not confined to the benefit of the accused alone, and may be invoked even if the evidence sought to be introduced supports the prosecution. What is paramount is whether such evidence is essential to the just decision of the case. Viewed in this light, the decision of the Trial Court to summon material witnesses and allow the introduction of documentary evidence which had been sought during investigation but omitted from the record due to an oversight, is a justified and appropriate exercise of judicial discretion.

7. At this stage, Mr. Singh submits that once copies of the documents proposed to be proved are furnished, the Petitioner shall consider whether to admit or dispute them. In the event the documents are not contested, the



necessity of summoning witnesses may not arise. This submission, it is clarified, may be placed before the Trial Court on the next date of hearing.

8. During the course of hearing, copies of the documents have been handed over to Petitioner's counsel. The Petitioner is at liberty make appropriate submissions before the Trial Court, in light of the statement made by Mr. Singh as recorded above. To enable this, one week's time from today is granted. Consequently, the recording of prosecution evidence shall stand deferred by a week.

9. Copy of the order be sent to the Trial Court for necessary information and compliance.

10. Disposed of along with pending applications.

SANJEEV NARULA, J

AUGUST 1, 2025

as

⁶ *Anees v. State NCT of Delhi*, 2024 INSC 368