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

+ CRL.M.C. 5992/2025, CRL.M.A. 25492-25493/2025

PRADEEP KUMAR

.....Petitioner

Through: Mr. Gurusharan Singh, Advocate.

versus

RAKESH KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

27.08.2025

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1. The present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 482 of Code of Criminal Procedure, 1973²) assails the judgment dated 11th July, 2025 passed by JMFC (NI Act), Digital Court-02. By the said judgement, the Trial Court allowed the Complainant/Respondent No.2's application under Section 311 of Cr.P.C. to bring on record an audio recording between him and the Petitioner.

2. The Petitioner contends that the call recording admitted by the Trial Court was actually a conversation between the parties that took place during the period of the mediation proceedings. It is argued that, as per Section 22(3) of the Mediation Act, 2023,³ the contents of mediation proceedings are required to remain confidential, and therefore, the Complainant should not have been allowed to present evidence originating from the mediation

¹ "BNSS"

² "Cr.P.C."

³ "Mediation Act"



process.

3. The aforementioned objection has been examined and overruled by the Trial Court with the following observations:

“Analysis

Prior to our discussion upon the merits of the application, it is pertinent to discuss the contours of powers U/Sec 311 CrPC stipulates:

“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.”

*The principles that govern the wielding of powers U/Sec 311 CrPC were enunciated by the Hon'ble Apex Court in **Rajaram Prasad Yadav vs State Of Bihar & Anr. 2013 (14) SCC 461** the relevant para is reproduced below:*

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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 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. 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.*
- g) *The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- h) *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.*
- i) *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.*
- j) *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.*
- k) *The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*
- l) *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.*
- m) *The power under Section 311 Cr.P.C. 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."*
4. *The courts are endowed with the sacrosanct duty to cull out the truth and ensure justice is done. Sec 311 CrPC confers wide powers upon the court to summon any witness or put on record any document at any stage whose evidence/evidentiary value can reveal crucial facts pertaining to the case and aid in finding the truth. The powers under the said provision are discretionary. The discretion ought to be guided by the exigency of the situation, requirement of fair trial such that the same is essential for a just*



decision of the case. It is easily deducible that the principle of justice should command the court as per facts and circumstances of the case.

5. *The law regarding Sec 311 of CrPC is well settled that the witness should be called only if the testimony is necessary for a just decision in the case. In the present matter the accused has prayed to put on record the recording between the complainant and the accused person, where allegedly the accused person has admitted his liability. In the considered view of this court, the audio recording will cull out the truth and the same is necessary for a just and fair decision in the matter.*

6. *The Ld. Counsel for the accused person has argued that the same is confidential and cannot be taken on record. At this stage let us refer to Section 22 of The Mediation Act, 2023 (for short, MA):*

“22. (1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential all the following matters relating to the mediation proceedings, namely:

(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;

(ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;

(iii) documents prepared solely for the conduct of mediation or in relation thereto;

(iv) any other mediation communication.”

Section 22(3) of MA provides that the above mentioned cannot be taken into evidence and the above said cannot be relied upon. It is clear from the bare reading of the above provision that the confidentiality clause covers only the proceedings relating to mediation and the proceedings in the mediation. A phone call between the complainant and the accused person outside the mediation proceedings cannot be said to be covered under Section 22 of MA. Therefore this argument of the Ld. Counsel for the accused is not sustainable.

7. *In lieu of the above discussion the application of the complainant is 7. allowed.*

8. *Put up for further CE on 27.08.2025.*

The application is accordingly disposed of.

Nothing stated hereinabove is an observation on the merits of the case.”

4. The Court is of the view that the Trial Court rightly concluded that the audio recording of the phone call between the parties does not fall under the category of conversations covered by mediation proceedings and, therefore, is not protected by Section 22(3) of the Mediation Act. The confidentiality



clause is limited to the mediation process itself, and communications occurring outside of those proceedings are not subject to the protections of Section 22 of the Mediation Act.

5. In light of the above, the view taken by the Trial Court calls for no interference by this Court in exercise of its jurisdiction under Section 528 BNSS.

6. Accordingly, the present petition is dismissed along with pending applications.

SANJEEV NARULA, J

AUGUST 27, 2025

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