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

% **Judgment reserved on: 27th March 2025**
Judgment pronounced on: 17th April, 2025

+ CRL.M.C. 7567/2024
HIPPOCAMPUS INFOTECH PRIVATE LTD AND ANR
THROUGH DIRECTOR/AUTHORISED SIGNATORY

..... Petitioner

Through: Mr. Praveen Singh, Mr.
Ajay Sharma, Mr.
Durgesh Nandini, Advs.

versus

STATE NCT OF DELHI AND ANR. Respondents

Through: Mr. Aman Usman, APP.
Mr. Amitabh Narendra,
Mr. Mridul Chakravarty,
Mr. Chetan Garg and Mr.
Indrayudh Chowdhury,
Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. This petition has been filed under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 [“**BNSS**”], passed by learned JMFC, Patiala House Court, New Delhi in Complaint Case No. 29052/2016, titled “*Gemalto Digital Security Pvt. Ltd. Vs. Hippocampus Infotech P. Ltd. & Ors.*”, filed under Section 138 of the Negotiable Instruments Act, 1881 [“**NI Act**”], whereby, the application filed under Section

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311 of the Code of Criminal Procedure [“Code”] by the petitioner was dismissed.

2. The brief facts are that Complainant/Respondent No. 2 filed a complaint under Section 138 NI Act with allegations that four cheques issued by petitioner No. 1 towards discharge of its liability were dishonoured with remarks “account closed/transferred to” vide bank return memo dated 20.05.2015. Petitioner did not make the payment despite demand notices dated 02.06.2015 and 20.06.2015.

3. Petitioners were summoned by the trial court vide order dated 20.08.2015. Notice under Section 251 Cr. PC was served upon the petitioner on 28.05.2019. Petitioners filed an application under Section 145(2) NI Act, which was allowed and the case was listed for cross examination of respondent No. 2. Complainant evidence was closed vide order dated 24.05.2023. Thereafter, statement under Section 313 of the Code was recorded on 20.09.2023. Defence evidence was closed vide order dated 16.01.2024.

4. Petitioners filed an application under Section 311 of the Code with fresh Vakalatnama of the counsel. In the meanwhile, another application was filed by respondent No. 2 for change of name of respondent from *Gemalto Digital Security Pvt. Ltd. to Thales Dis India Private Limited*, which was allowed vide order dated 27.06.2024.

5. The application of the petitioners under Section 311 Cr. PC for recall of respondent No. 2 for cross examination and for permission to lead defence evidence was dismissed vide impugned order dated



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20.07.2024. It is this order, which has been challenged in this petition.

6. Learned counsel for the petitioner has argued that the previous counsel for the petitioner belongs to Bangalore and is aged about 72 years and was suffering from Diabetic Retinopathy, due to which, he was advised sittings by the doctor for laser treatment and due to this reason his counsel did not appear on so many dates, as a result of which, the right of the petitioners to cross examine respondent No. 2 was closed. It is submitted that petitioners should not be made to suffer for the act of the counsel. It is submitted that respondent No. 2 is a vital witness and his non-examination shall be fatal to the case of the petitioners, and therefore, petitioners be granted an opportunity to cross examine respondent No. 2.

7. Per contra, learned counsel for respondent No. 2 supported the impugned order passed by the learned trial court arguing that petitioners did not produce any medical record of the previous counsel. It has been submitted that the right of cross examination was closed on 24.05.2023, statement of petitioner No. 2/accused was recorded under Section 313 Cr. PC on 20.09.2023. The present application was filed on 17.02.2024 i.e. even after the closure of right to lead defence evidence. It is submitted that respondent No.2 has been adopting the delaying tactics since the beginning of the trial and therefore the petition is liable to be dismissed.

8. I have considered the submissions made by the learned counsels and have carefully perused the material placed on record. Section 313 Cr. PC is a salutary provision which empowers the Court to summon



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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 to the just decision of the case. It is aimed at empowering the court to find out the truth and to render a just decision. Such power is discretionary and is to be exercised only for strong and valid reasons and with caution and circumspection.

9. This Section confers a wide discretion on the Court to act as the exigencies of justice require. The discretion conferred to the Court has to be exercised judicially. The Apex Court in its judgments in **Vijay Kumar Vs. State of U.P. (2011) 8 SCC 136**, **State (NCT of Delhi Vs. Shiv Kumar Yadav (2016) 2 SCC 402** and **Ratanlal Vs. Prahlad Jat (2017) 9 SCC 340**, has held that the recall of witness is not a matter of course and power under Section 311 of the Code has to be exercised judiciously, with caution and circumspection and not arbitrarily or capriciously. Such discretionary power has to be exercised on the basis of facts and circumstances of each case and has to be balanced carefully with considerations. Recently, in **Satbir Singh Vs. State of Haryana, 2023 SCC OnLine SC 1086**, the Supreme Court adverted to a few decisions of recent vintage. The relevant paras of the judgment are extracted below:-

9. Section 311 of the Criminal Procedure Code, 1973 (hereinafter referred to as the “CrPC”) has engaged this Court's attention before. We will advert to a few decisions of recent vintage. While overturning an order of the High Court allowing an application for recall of a witness, which was rejected by the trial Court, this Court held as under, in *Ratanlal v. Prahlad Jat*, (2017) 9 SCC 340:

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‘17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. In Vijay Kumar v. State of U.P. [Vijay Kumar v. State of U.P., (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240], this Court while explaining scope and ambit of Section 311 has held as under : (SCC p. 141, para 17)

“17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of [CrPC] and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously.”

19. In Zahira Habibullah Sheikh (5) v. State of Gujarat [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8], this Court has considered the concept underlying under Section 311 as under : (SCC p. 392, para 27)

“27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the 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 section is not limited only for the benefit



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of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.”

20. *In State (NCT of Delhi) v. Shiv Kumar Yadav [State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402 : (2016) 1 SCC (Cri) 510], it was held thus : (SCC pp. 404g-405a)*

“... Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined.”

21. *The delay in filing the application is one of the important factors which has to be explained in the application. In Umar Mohammad v. State of Rajasthan [Umar Mohammad v. State of Rajasthan, (2007) 14 SCC 711 : (2009) 3 SCC (Cri) 244], this Court has held as under : (SCC p. 719, para 38)*



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“38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed there against and the High Court also rejected the said contention. It is not a case where stricto sensu the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed.”

10. In *Manju Devi v. State of Rajasthan*, (2019) 6 SCC 203, this Court emphasized that a discretionary power like Section 311, CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone. A note of caution was sounded in *Swapan Kumar Chatterjee v. Central Bureau of Investigation*, (2019) 14 SCC 328 as under:

‘10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

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



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court has vide power under this section to even recall witnesses for re-examination 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.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.'

10. A perusal of the orders annexed with the petition reveal that the conduct of the petitioner during the trial was lethargic, so much so, on many occasions, he did not appear before the Court, resulting of issuance of non-bailable warrants against him. Several opportunities were granted to the petitioners for the cross examination of the complainant. The petitioners had been taking the court orders for granted, probably, the intent was to delay the case. Petitioners tried to place entire burden on the shoulder of the previous counsel by pleading his indisposition because of health issues. The trial court observed that no medical document of the previous counsel was placed on record to support the version of the accused. Even if assuming that the counsel was suffering from health issues due to which he was unable to come to Delhi from Bangalore, nothing prevented the petitioner in engaging a new advocate. The orders passed by the trial court reveal that trial court had rather been lenient with the petitioner, inasmuch as, not only NBWs were cancelled liberally, several adjournments were granted to the petitioner for cross



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examination of respondent No. 2. Due to frequent adjournments, the trial is yet not concluded. Petitioners did not avail the opportunities granted to them for cross examination of respondent No. 2 and for leading evidence in his defence. Mere change of name of respondent entity would not confer any fresh right of cross-examination of respondent no.2. In these circumstances, the Court is of the opinion that the provisions of Section 311 Cr. PC cannot be allowed to be misused by the petitioners to derail the proceedings or to cause inconvenience to the other party as the same would amount to miscarriage of justice and cause prejudice to respondent no.2.

11. In view thereof, I find no infirmity in the impugned order dated 20.07.2024. The petition is devoid of any merit.

12. Accordingly, the petition is dismissed along with pending applications, if any.

RAVINDER DUDEJA, J.

April 17, 2025

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