HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 3683 OF 2026

C/W

CRIMINAL PETITION NO. 3560 OF 2026

IN CRL.P No. 3683/2026

BETWEEN:

SRI. NAGARAJU M,
S/O. MARASAPPA,
AGED ABOUT 53 YEARS,
RESIDING AT A.V.R. ROAD,
J.C. EXTENSION.
KANAKAPURA TOWN,
BENGALURU SOUTH DISTRICT - 562 117.

...PETITIONER

(BY SRI. MAHESHA N C., ADVOCATE)

Digitally signed by SANJEEVINI J KARISHETTY
Location: High Court of Karnataka

AND:

SRI. KIFAYATHUALLA SHERIFF,
S/O. RAHIM SHERIFF,
AGED ABOUT 43 YEARS,
SILK MERCHANT, MELEKOTE,
KANAKAPURA TOWN,
BENGALURU SOUTH DISTRICT - 562 117.

...RESPONDENT

(BY SMT. RAJESHWARI M., ADVOCATE)

THIS CRL.P. IS FILED U/S 482 OF CR.P.C. (FILED U/S 528 BNSS) PRAYING TO SET ASIDE THE ORDER DATED 21.02.2026 IN C.C.NO.219/2012 PASSED BY THE III ADDL. CIVIL JUDGE AND JMFC, AT KANAKAPURA AND ALLOW THE APPLICATION FILED BY THE PETITIONER U/S 311 OF CRPC BY RECALLING THE DW-1 FOR THE FURTHER DEFENCE SIDE EVIDENCE.

IN CRL.P NO. 3560/2026

BETWEEN:

SRI. NAGARAJU M,
S/O. MARASAPPA,
AGED ABOUT 53 YEARS,
RESIDING AT A.V.R. ROAD,
J.C. EXTENSION,
RAMANAGARA DISTRICT,
(BENGALURU SOUTH) - 562 117.

...PETITIONER

(BY SRI. MAHESHA N C., ADVOCATE)

AND:

SRI. IRSHADULLA SHARIFF,
S/O. RAHIM SHERIFF,
AGED ABOUT 49 YEARS,
SILK MERCHANT,
MELEKOTE,
KANAKAPURA TOWN,
RAMANAGARA DISTRICT,
(BENGALURU SOUTH) - 562 117.

...RESPONDENT

(BY SMT. RAJESHWARI M., ADVOCATE)

THIS CRL.P. IS FILED U/S 482 OF CR.PC (FILED U/S 528 BNNS) PRAYING TO SET ASIDE THE ORDER DATED 21.02.2026 IN CC NO.82/2012 PASSED BY III ADDL.CIVIL JUDGE AND JMFC AT KANAKAPURA AND ALLOW THE APPLICATION FILED BY THE PETITIONER U/S 311 OF CRPC BY RECALLING THE DW-1 FOR THE FURTHER DEFENCE SIDE EVIDENCE.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner, common in both these petitions, is before this Court seeking the following prayer:

"**In Crl.P.No.3683/2026:**

a) Call for the records from the Hon'ble III Additional Civil Judge and J.M.F.C, at Kanakapura in related C.C.No.219/2012.

b) Set aside the order dated 21-02-2026 in C.C.No.219/2012 passed by III Additional Civil Judge and J.M.F.C., at Kanakapura and allow the application filed by the Petitioner U/s 311 of Cr.P.C. by recalling the DW-1 for the further defense side evidence in the ends of justice.

c) Pass any other order/s as deemed fit by this Hon'ble Court in the facts and circumstances of the case in the ends of justice.

In Crl.P.No.3560/2026:

a) Call for the records from the Hon'ble III Additional Civil Judge and J.M.F.C, at Kanakapura in related C.C.No.82/2013.

b) Set aside the order dated 21-02-2026 in C.C.No.82/2013 passed by III Additional Civil Judge and J.M.F.C., at Kanakapura and allow the application filed by the Petitioner U/s 311 of Cr.P.C. by recalling the DW-1 for the further defense side evidence in the ends of justice.

c) Pass any other order/s as deemed fit by this Hon'ble Court in the facts and circumstances of the case in the ends of justice."

2. Heard the learned counsel Sri. Mahesha N.C. appearing for the petitioner and the learned counsel Smt. Rajeshwari M, appearing for the respondents in both these petitions and have perused the material on record.

3. The issue is with regard to the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short). A transaction of Rs.2 lakhs that happens in 2012 is still subsisting before the concerned Court. The issue now is not with regard to the merit of the matter, but with regard to two applications filed under Section 311 of the Cr.P.C. to mark certain documents by recalling DW-1. The concerned

Court has rejected the same on the score that it is only a ruse to drag the proceedings.

4. The learned counsel for the petitioner for the petitioner submits that if one opportunity is rendered, he would conclude the marking of the documents on the date fixed by the concerned Court and would not seek any adjournment thereof.

5. In the light of the application so filed by the petitioner-accused in both these cases, the learned counsel for the respondents submits that even if this Court would allow the petition or allow the marking of the said documents, the proceedings should be directed to be concluded within a time limit.

6. The purport of Section 311 of the Cr.P.C. is succinctly explained by the Apex Court in the case of **VARSHA GARG v. STATE OF MADHYA PRADESH**[1]**,** wherein the Apex Court has held as follows:

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[1] **2022 SCC OnLine SC 986**

"…. …. ….

31. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine Section 311 of CrPC. Section 311 provides that the Court "may":

(i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and

(ii) Recall and re-examine any person who has already been examined.

32. This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court "shall" summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

33. The first part of the statutory provision which uses the expression "may" postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression "shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case". Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory.

34. A two judge Bench of this Court in Mohanlal Shamji Soni (supra) while dealing with pari materia provisions of Section 540 of the Criminal Code of Procedure 1898 observed:

> "16. The second part of Section 540 as pointed out albeit imposes upon the court an obligation of summoning or recalling and re-

> examining any witness and the only condition prescribed is that the evidence sought to be obtained must be essential to the just decision of the case. When any party to the proceedings points out the desirability of some evidence being taken, then the court has to exercise its power under this provision — either discretionary or mandatory — depending on the facts and circumstances of each case, having in view that the most paramount principle underlying this provision is to discover or to obtain proper proof of relevant facts in order to meet the requirements of justice."

35. Justice S Ratnavel Pandian, speaking for the two judge Bench, noted that the power is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which it can be exercised or the manner of its exercise. It is only circumscribed by the principle that the "evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means." In that context the Court observed:

> "18 …Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties."

36. Summing up the position as it obtained from various decisions of this Court, namely *Rameshwar Dayal v. State of U.P.*, *State of W.B. v. Tulsidas Mundhra*, *Jamatraj Kewalji Govani v. State of Maharashtra, Masalti v. State of U.P., Rajeswar Prosad Misra v. State of W.B.* and *R.B. Mithani v. State of Maharashtra*, the Court held:

> "27. The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case."

37. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.

38. Section 91 CrPC empowers inter alia any Court to issue summons to a person in whose possession or power a document or thing is believed to be, where it considers the production of the said document or thing necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the CrPC.

39. Section 91 forms part of Chapter VII of CrPC which is titled "Processes to Compel the Production of Things". Chapter XVI of the CrPC titled "Commencement of Proceedings before Magistrates" includes Section 207 which provides for the supply to the accused of a copy of the police report and other documents in any case where the proceeding has been instituted on a police report.25 Both operate in distinct spheres.

40. In the present case, the application of the prosecution for the production of the decoding registers is relatable to the provisions of Section 91 CrPC. The decoding registers are sought to be produced through the representatives of the cellular companies in whose

custody or possession they are found. The decoding registers are a relevant piece of evidence to establish the co-relationship between the location of the accused and the cell phone tower. The reasons which weighed with the High Court and the Trial Court in dismissing the application are extraneous to the power which is conferred under Section 91 on the one hand and Section 311 on the other. The summons to produce a document or other thing under Section 91 can be issued where the Court finds that the production of the document or thing "is necessary or desirable for the purpose of any investigation, trial or other proceeding" under the CrPC. As already noted earlier, the power under Section 311 to summon a witness is conditioned by the requirement that the evidence of the person who is sought to be summoned appears to the Court to be essential to the just decision of the case.

41. PWs 33, 41, 43 and 48, who were the nodal officers of Idea, Airtel, Reliance and Vodafone have already been examined. During the examination of PW-41, the nodal officer of Airtel, the witness specifically deposed during the course of examination that:

> "2. Call detail of mobile number XXXXXXXXXX, which has 134 pages is Exhibit P-104, I sent the same detail of the call to the police. Each page of the same has seal of Bharti Airtel on the same. Call detail contains date and time wise detail of call and short message services made/sent and received by the customer. Additionally, location of the mobile number is available in code number along with the time of the call or message for which call detail is provided. Location of the call made by the mobile number in certain time has been shown with codes, I cannot state name of the location today by seeing the code. Location can be stated after decoding the same. We have coding chart for location, by seeing the same location can be started. I don't have aforesaid chart along with me. Aforesaid chart is available in the office."

(emphasis supplied)

42. The relevance of the decoding register clearly emerges from the above statement of PW-41. Hence, the effort of the prosecution to produce the decoding register which is a crucial and vital piece of evidence ought not to

have been obstructed. In terms of the provisions of Section 311, the summoning of the witness for the purpose of producing the decoding register was essential for the just decision of the case.

43. Having dealt with the satisfaction of the requirements of Section 311, we deal with the objection of the respondents that the application should not be allowed as it will lead to filling in the lacunae of the prosecution's case. However, even the said reason cannot be an absolute bar to allowing an application under Section 311.

44. In the decision in *Zahira Habibullah Sheikh (5) v. State of Gujarat*, which was more recently reiterated in Godrej Pacific Tech. Ltd. v. Computer Joint India Ltd.27, the Court specifically dealt with this objection and observed that the resultant filling of loopholes on account of allowing an application under Section 311 is merely a subsidiary factor and the Court's determination of the application should only be based on the test of the essentiality of the evidence. It noted that:

> "28. The court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.
>
> (emphasis supplied)

45. The right of the accused to a fair trial is constitutionally protected under Article 21. However, in *Mina Lalita Baruwa* (supra), while

reiterating *Rajendra Prasad* (supra), the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in interest of justice. In *Rajendra Prasad* (supra), the Court had held that:

> **"8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors.** 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. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

(emphasis supplied)

46. In the present case, the importance of the decoding registers was raised in the examination of PW-41. Accordingly, the decoding registers merely being additional documents required to be able to appreciate the existing evidence in form of the call details which are already on record but use codes to signify the location of accused, a crucial detail, which can be decoded only through the decoding registers, the right of the accused to a fair trial is not prejudiced. The production of the decoding registers fits into the requirement of being relevant material which was not brought on record due to inadvertence.

47. Finally, we also briefly deal with the objection of the respondents regarding the stage at which the application under Section 311 was filed. The respondents have placed reliance on *Swapan Kumar* (supra), a two judge Bench decision of this Court, to argue that the application should not be allowed as it has been made at a belated stage. The Court in Swapan Kumar (supra) observed:

> "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 wide 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."

48. In the present appeal, the argument that the application was filed after the closure of the evidence of the prosecution is manifestly erroneous. As already noted above, the closure of the evidence of the prosecution took place after the application for the production of the decoding register and for summoning of the witness under Section 311 was dismissed. Though the dismissal of the application and the closure of the prosecution evidence both took place on 13 November 2021, the application by the prosecution had been filed on 15 March 2021 nearly eight months earlier. As a matter of fact, another witness for the prosecution, Rajesh Kumar Singh, was also released after examination and cross-examination on the same day as recorded in the order dated 13 November 2021 of the trial court.

49. The Court is vested with a broad and wholesome power, in terms of Section 311 of the CrPC, to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute

bar. This Court in *Zahira Habibulla H. Sheikh* (supra) while dealing with the prayers for adducing additional evidence under Section 391 CrPC at the appellate stage, along with a prayer for examination of witnesses under Section 311 CrPC explained the role of the court, in the following terms:

> "43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. **Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness."**
>
> (emphasis supplied)

50. Further, *in Zahira Habibullah Sheikh (5)* (supra), the Court reiterated the extent of powers under Section 311 and held that:

> "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 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."

(emphasis supplied)

51. The Court while reiterating the principle enunciated in Mohanlal Shamji Soni (supra) stressed upon the wide ambit of Section 311 which allows the power to be exercised at any stage and held that:

> "44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. : (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. **In Mohanlal v. Union of India this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, "any court", "at any stage", or "any enquiry or trial or other proceedings", "any person" and "any such person" clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should**

> **be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, "essential" to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth."**
>
> (Emphasis supplied)

7. In the light of the afore-quoted judgment of the Apex Court and the submission and contra submission, the application filed by the petitioner-accused under Section 311 of the Cr.P.C. for its contents needs to be allowed. Therefore, I deem it appropriate to direct the concerned Court to fix a date for the marking of the documents by recalling DW-1.

8. Proceedings of the year 2012 are still languishing even after lapse of 14 years. Therefore, the concerned Court shall now endeavour to conclude the proceedings within an

outer limit of three (3) months from the date of receipt of a copy of this order, without seeking extension of time on whatsoever reason it would be, and conclude the proceedings in accordance with law.

9. For the aforesaid reasons, the following:

ORDER

i. Criminal petition is allowed.

ii. The impugned order dated 21-02-2026 passed by the III Additional Civil Judge and JMFC, Kanakapura in C.C. No.219/2012 stands quashed.

iii. The impugned order dated 21-02-2026 passed by the III Additional Civil Judge and JMFC, Kanakapura in C.C. No.82/2013 stands quashed.

iv. The application under Section 311 of the Cr.P.C. dated 21-01-2026 in C.C. No.219/2012 stands allowed.

v. The application under Section 311 of the Cr.P.C. dated 21-01-2026 in C.C. No.82/2013 stands allowed.

vi. The concerned Court shall fix a date for the marking of documents by recalling DW-1 and regulate its procedure thereafter, bearing in mind the observations made during the course of the order.

vii. It is made clear that this is the last straw of opportunity to the petitioner to recall the aforementioned witness and the petitioner shall again not file an application seeking recalling of the witness.

Ordered accordingly.

Pending applications, if any, stand disposed as a consequence.

Sd/-
(M.NAGAPRASANNA)
JUDGE

SJK
List No.: 1 Sl No.: 44