



136 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-13905-2023
Date of decision: 08.04.2026

MANJU

...PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA

Present: Mr. Ankush Rampal, Advocate
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

None for respondent No.2.

SUBHAS MEHLA, J. (ORAL)

1. Present petition has been filed under Section 482 Cr.P.C. for quashing of impugned order dated 05.12.2022 (Annexure P-42) passed by learned Judicial Magistrate Ist Class, Ludhiana vide which, the application under Section 311 Cr.P.C. for summoning witness in FIR No.143 dated 26.12.2016 registered under Sections 380/451 of Indian Penal Code, 1860 at Police Station Jamalpur, District Ludhiana has been allowed.

2. Brief facts of the present case are that on 05.12.2015, petitioner entered the house of the complainant by breaking the lock, after stealing all the articles kept there, had misappropriated the same with a *mala fide* intention to take illegal possession of the house and before this also, petitioner did the same things two to three times. Hence, the FIR was registered.

3. Learned counsel for the petitioner submitted that the impugned order suffers from patent illegality and perversity and the trial Court has erred



in passing the impugned order; charges were framed on 26.07.2017 and from 06.09.2017 to 18.08.2022, the case was fixed for prosecution evidence; despite availing sufficient opportunities, prosecution failed to conclude its evidence, hence, the trial Court vide order dated 15.09.2022, closed the evidence of the prosecution. However, after closing of the evidence, prosecution moved an application under Section 311 Cr.P.C. for examination of 09 witnesses and the application was partly allowed qua the examination of witnesses mentioned at serial No.1, 3, 5, 7 and 10 in the list of witnesses. The trial Court has failed to consider the fact that the despite granting several opportunities to the prosecution, it failed to examine the witnesses. As such, learned counsel prayed for setting aside the impugned order.

4. Detailed reply dated 22.04.2024 filed by way of an affidavit of Jasbinder Singh (PPS), ACP, Industrial Area-A, Ludhiana on behalf of respondent-State is taken on record. Learned State counsel opposed the prayer made by the petitioner by submitting that the petitioner is on bail, the remaining witnesses are material witnesses who are significant for the proper decision of the case and the trial Court, at any stage, has power to summon any person as a witness or examine any person. As such, learned State counsel prayed for dismissal of the present petition.

5. Heard.

6. The power under Section 311 Cr.P.C. is a wide power which can be exercised at any stage of trial, for proper adjudication of the case. The witnesses which are allowed to be summoned by virtue of impugned order are material witnesses. In ***Rajendra Prasad v. Narcotic Cell through its Officer-***

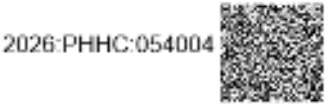


in-Charge, Delhi, 1999(3) RCR (Criminal) 440, Hon'ble the Supreme Court has observed as under :-

"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 over sight 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."

In ***Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Others, 2006(2) RCR (Criminal) 448***, Hon'ble the Supreme Court has considered the concept underlining object of Section 311 Cr.P.C. as under:-

"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".

7. Keeping in view the aforementioned facts and circumstances, this Court finds no merit in the present petition and the same stands dismissed.

April 08, 2026
manisha

(SUBHAS MEHLA)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |