

2026:PHHC:045543



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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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CRM-M-15620-2026 (O & M)

Date of decision: 23.03.2026

ANIL KUMAR

....Petitioner

Versus

STATE OF PUNJAB AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rahul Jaswal, Advocate,
for the petitioner.

AMAN CHAUDHARY, J. (ORAL)

1. Challenge in the present petition is to the order dated 06.03.2026, Annexure P-6, vide which application filed by the petitioner under Section 311 Cr.P.C., to recall PW 13/Witness No.18 Inspector Lakhwinder Singh, Investigating officer, has been dismissed.

2. Learned counsel contends that on 27.01.2026, cross-examination of the said witness could not be conducted on account of the defence counsel had to go to his home for some personal work. He has filed an application under Section 311 Cr.P.C., for cross-examination of the said witness, but the same was wrongly dismissed merely on the ground that the same is an attempt to delay the trial. Due to absence of his counsel, the petitioner should not be penalized. An irreparable loss and

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prejudice is being caused to him. Only one opportunity, which may even be subject to costs, be granted.

3. Notice of motion.

4. At the asking of the Court, Mr. Manipal Singh Atwal, DAG, Punjab, accepts notice on behalf of the respondent No.1-State and opposes the petition on the ground that trial is at the fag end and the prosecution evidence has been closed as the list of witnesses has exhausted. The trial Court has rightly dismissed the application, it being filed at a belated stage and to delay the proceedings.

5. Heard.

6. Before proceeding further, it is expedient to refer Section 311 CrPC, that reads thus:

“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 as a witness, or examine 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.”

7. The utilization of powers under Section 311 of Cr.P.C. by the Court serves a specific purpose, which is not to patch up the gaps in the evidence of the prosecution or bolster the case of defence, but rather to unearth the pertinent facts or obtain solid evidence necessary for proper adjudication in the case. The latter part of the section clearly enunciates that any person can be recalled or re-examined, as long as the Court is satisfied that his evidence is essential for a just decision of the case and

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there might not be miscarriage of justice. Illuminating the provision of Section 311 Cr.P.C. and powers with the Court, Hon'ble the Supreme Court in the case of **Godrej Pacific Tech. Limited vs. Computer Joint India Limited**, (2008) 11 SCC 108, observed that, "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."

8. In context of Section 311 CrPC, Hon'ble the Supreme Court in the case of **Iddar vs. Aabida**, (2007) 11 SCC 211, observed that, "It is couched in the widest possible terms and calls for no limitation, either

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with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means...”

9. Hon’ble the Supreme Court in **Mohanlal Shamji Soni vs. Union of India**, 1991 Supp (1) SCC 271 laid down the ratio that, “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 reexamine 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 requirements of justice command this examination of any person which would depend on the facts and circumstances of each case.” It has not been disputed that the trial is still at a nascent stage, with the prosecution evidence still ongoing.

10. The law as enunciated being that the power under Section 311 Cr.P.C. can be exercised at any stage of the proceedings in order to determine the truth and render just decision as also to meet the ends of justice, such discretion of the Court is not limited. The determining factor should therefore be whether summoning/ recalling of the witnesses is in fact essential to the just decision of the case.

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11. Hon'ble The Supreme Court in the case of **Varsha Garg vs. State of M.P.**, 2022 SCC OnLine SC 986 while considering and allowing the application under Section 311 CrPC had observed that, "...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."

12. It is trite, that the client should not be made to suffer on account of the absence of the counsel, in regards whereof, it would be apposite to refer to the case of **Rafiq vs. Munshilal and another**, AIR 1981 SC 1400, wherein Hon'ble the Supreme Court had held that, "What is the fault of the party who having done everything in his power expected of him, would because of his advocate... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent... We cannot be a party to an innocent party suffering injustice merely because of his chosen advocate defaulted." Reiterating the aforesaid view, in **Shaikh Mukthar and another vs. State of Andhra Pradesh**, (2020) 19 SCC 178, it was observed that the appellants should not have been penalised for the absence of their advocate on the date of hearing.

13. The duty of the Court is to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. The opportunity of cross-examining the witnesses, which is essential for the just decision of the case, having not been granted, due to the non-

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availability of the learned counsel, would result in the accused-petitioner suffering a penalty totally disproportionate to the gravity of the mistake, that too due to unforeseen circumstances, being beyond his control.

14. Fairness of trial being a virtue that is sacrosanct in the judicial system, the dismissal of the application of the petitioner would amount to denial of a fair opportunity to him to defend himself. There is even a duty cast upon the Court to arrive at the truth, one of the means for which is the proper and complete examination of the witnesses.

15. The facts of the present case when considered in juxtaposition to the judicial pronouncements, has led this Court to a conclusion that the impugned order is liable to be set aside. Accordingly, the present petition is allowed, subject to costs of Rs.15,000/- to be deposited with the trial Court, which shall be disbursed to the husband of complainant-respondent No.2, she having passed away. The accused-petitioner is granted only one effective opportunity to cross-examine PW 13 Lakhwinder Singh, Investigating officer.

16. Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the instant petition.

17. Pending application(s), if any, shall also stand disposed of accordingly.

23.03.2026

parveen kumar

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No

(AMAN CHAUDHARY)
JUDGE