

**CRR-1603-2022(O&M) 1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(137)****CRR-1603-2022(O&M)
DATE OF DECISION: 24.02.2026**

Vibhor Monga

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM HON'BLE MR. JUSTICE SUBHAS MEHLA

Present Mr.Sanjiv Yadav, Advocate,
for Mr. Rakesh Gupta, Advocate, for the petitioner.
Mr. Karan Veer Singh, Sr.DAG, Haryana.
Mr. Harsh Chopra, Advocate, for respondents no.2 and 3.

SUBHAS MEHLA, J (ORAL)

1. Present revision petition has been filed for setting aside impugned order dated 04.07.2022, passed by the learned Judicial Magistrate Ist Class, Ambala, in case No. CHI/555 of 2016, titled as "State versus Vibhor Monga", arising out of FIR No.86 dated 26.03.2016, under Sections 406, 409, 420, 467, 468 and 471 IPC, registered at Police Station Ambala City, District Ambala (Annexure P-1), whereby application under Section 311 Cr.P.C for summoning respondents no.3 and 4 for their cross examination was dismissed.

2. Learned counsel for the petitioner vehemently contends that the impugned order dated 04.07.2022 passed by the learned Judicial Magistrate Ist Class, Ambala, dismissing the application under Section 311 Cr.P.C., is wholly illegal, arbitrary and contrary to the settled principles of law. It is submitted that the petitioner is facing trial in FIR No.86 dated 26.03.2016, registered under Sections 406, 409, 420, 467, 468 and 471 IPC at Police



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Station Ambala City, District Ambala, on the allegations that while working as an employee of the complainant-company, he had allegedly misappropriated an amount of Rs.11 lakhs by forging receipts and collecting cash from customers.

3. Learned counsel argues that respondents No.3 and 4 are material and essential witnesses and for the just decision of the case their cross examination was necessary as their testimonies go to the root of the allegations levelled against the petitioner. Their cross-examination is necessary to test the veracity, credibility and truthfulness of the prosecution version, particularly with regard to the alleged collection of cash, issuance of receipts and the so-called internal audit conducted by the complainant-company.

4. It is further submitted that Section 311 Cr.P.C. confers very wide and plenary powers upon the trial Court to summon any person as a witness or recall and re-examine any person already examined, if his evidence appears to be essential for the just decision of the case. The provision is meant to advance the cause of justice and not to thwart it. The learned trial Court, while dismissing the application, has failed to appreciate that denial of an opportunity to cross-examine material witnesses amounts to serious prejudice to the defence and is violative of the principles of natural justice and the right to fair trial guaranteed under Article 21 of the Constitution of India.

5. Learned counsel further contends that the petitioner does not seek to fill up any lacuna in the defence, rather he seeks a fair opportunity to

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effectively defend himself against serious allegations involving moral turpitude and substantial financial implications. It is argued that the application under Section 311 Cr.P.C. was moved bona fide at an appropriate stage of the trial, and no prejudice would have been caused to the prosecution if the witnesses were permitted to be summoned for cross-examination.

6. It is also submitted that the learned Magistrate has adopted a hyper-technical approach while dismissing the application, without considering that criminal jurisprudence mandates that every accused must be afforded full and effective opportunity to defend himself. The impugned order, therefore, suffers from non-application of mind and is liable to be set aside in the interest of justice.

7. On these grounds, learned counsel prays that the impugned order dated 04.07.2022 be set aside and the application under Section 311 Cr.P.C. be allowed, permitting the petitioner to cross-examine respondents No.3 and 4 for the just and proper adjudication of the case.

8. Learned counsel for the respondent–State assisted by learned counsel for complainant contends that the present petition is wholly misconceived and has been filed only to delay the trial proceedings, which are pending since the year 2016. The learned Judicial Magistrate Ist Class, Ambala has rightly dismissed the application under Section 311 Cr.P.C. after considering the stage of the trial and the conduct of the petitioner; the application under Section 311 Cr.P.C. was moved at a belated stage only to fill up lacunae in the defence and to delay the conclusion of trial; that the



power under Section 311 Cr.P.C. is discretionary and is to be exercised sparingly. It cannot be invoked merely because the accused desires to recall witnesses after having failed to properly cross-examine them earlier. The provision is not meant to enable a party to rectify omissions or negligence; that the learned trial Court has passed a well-reasoned and speaking order while dismissing the application, holding that no sufficient ground was made out to recall the witnesses and that the evidence sought to be elicited was not essential for just decision of the case; that the petitioner has been facing trial for serious economic offences involving breach of trust and forgery, and the material on record prima facie establishes his complicity. Recalling of witnesses at this stage would cause unnecessary delay and prejudice to the prosecution case; that no illegality, perversity or jurisdictional error can be attributed to the impugned order dated 04.07.2022, warranting interference by this Hon'ble Court in exercise of its revisional/inherent jurisdiction. Hence, it is prayed that the present petition be dismissed being devoid of any merit. In support of his contention, learned counsel has relied upon law laid down by Hon'ble Supreme Court in **(2016) 2 Supreme Court Cases 402 State (NCT of Delhi) versus Shiv Kumar Yadav and another** and **(2016) 8 Supreme Court Cases 762 State of Haryana versus Ram Mehar and others.**

9. After hearing learned counsel for the parties and perusing the record, this Court finds no merit in the present petition. The impugned order dated 04.07.2022 passed by the learned Judicial Magistrate Ist Class, Ambala, declining the application under Section 311 Cr.P.C., does not suffer



from any illegality, perversity or material irregularity warranting interference. It is evident from the record that respondents No.3 and 4 had already been examined during trial and adequate opportunity was afforded to the petitioner to cross-examine them. The application under Section 311 Cr.P.C. was moved at a belated stage without demonstrating any compelling or extraordinary circumstance to show that recalling the said witnesses was essential for the just decision of the case. The power under Section 311 Cr.P.C., though wide, is discretionary in nature and is to be exercised judiciously and not to enable a party to fill up lacunae left in the evidence or to prolong the proceedings. The trial pertains to FIR No.86 dated 26.03.2016 registered under Sections 406, 409, 420, 467, 468 and 471 IPC, involving allegations of misappropriation and forgery to the tune of approximately Rs.11 lakhs. The matter has been pending since 2016 and the learned trial Court has rightly considered the stage of the proceedings while dismissing the application. No prejudice of such magnitude has been shown to have been caused to the petitioner which would necessitate recall of the witnesses. The impugned order reflects due application of mind and cannot be said to be arbitrary or mechanical. Interference in revisional/inherent jurisdiction is warranted only where there is manifest miscarriage of justice, which is not made out in the present case.

10. While considering the scope of Section 311 Cr.P.C. and the revisional jurisdiction of this Court, reliance placed upon the judgments of the Hon'ble Supreme Court in *State (NCT of Delhi)'s case (supra)* and *State of Haryana versus Ram Mehar and others's case (supra)* is apposite.



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In Shiv Kumar Yadav’s case (supra), the Hon’ble Supreme Court held that though the power under Section 311 Cr.P.C. is wide, it must be exercised judiciously and not to permit recall of witnesses for filling up omissions or lacunae in the case. Similarly, in Ram Mehar’s case (supra), it was observed that recall of witnesses cannot be allowed in a routine or mechanical manner and the Court must be satisfied that such recall is essential for a just decision of the case.

In the present matter, the witnesses had already been examined and adequate opportunity for cross-examination was granted. The application under Section 311 Cr.P.C. does not disclose any exceptional circumstance warranting recall of the witnesses and appears to have been moved to protract the trial.

Further, in exercise of revisional jurisdiction, this Court does not sit as an appellate Court to re-appreciate the discretion exercised by the trial Court unless the impugned order suffers from patent illegality, perversity or jurisdictional error. No such infirmity is made out.

Accordingly, in view of the law laid down by the Hon’ble Supreme Court and finding no illegality in the impugned order, the application under Section 311 Cr.P.C. is dismissed.

11. Pending applications, if any, shall also stand disposed of.

24.02.2026
mamta

(SUBHAS MEHLA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No