

Court No. - 14

Case :- APPLICATION U/S 482 No. - 6409 of 2025

Applicant :- Maniram Pal @ Maniram

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home (Crime And Investigation Deptt.) Lko. And Another

Counsel for Applicant :- Sheo Prakash Singh

Counsel for Opposite Party :- G.A., Swati Sharma

Hon'ble Shree Prakash Singh, J.

1. Ms. Swati Sharma and Mr. Aman Diwedi, Advocates have put in appearance by filing Vakalatnama for opposite party no.2/ informant and the same is taken on record.

2. Heard Sri Sheo Prakash Singh, learned counsel for the applicant, learned counsel for the opposite party no.2/ informant/ complainant, Sri Sushil Pandey, learned A.G.A. for the State and perused the record.

3. The present application is directed against the impugned order dated 23.06.2025, passed by Additional District and Sessions Judge/ Special Judge, EC Act, Pratapgarh in S.T. No. 115 of 2024, arising out of Case Crime No. 257 of 2020 under Section 307 I.P.C., Police Station Patti, District Pratapgarh. Further prayer is made that one opportunity be provided to the petitioner for cross-examination of witnesses, namely, PW-2 - Ramesh Pal and PW-3 - Dr. Anuj Kumar Chaurasiya, for fair

and proper disposal of the case."

4. Briefly stated prosecution story is that the learned counsel for the applicant is that the opposite party no.2/ informant had got lodged the FIR against the petitioner on 24.09.2020, bearing Case Crime No. 257 of 2020, under Section 307 of IPC at Police Station Patti, District Pratapgarh, while instituting an application under Section 156(3) of Cr.P.C. with respect to an alleged incident, which said to have happened on 27.02.2020 at 7:30 P.M. The injured was medically examined on 27.02.2020, and thereafter, the X-ray was also got done but no fracture was seen. The applicant was arrested by the police on 29.08.2023 and he was released on bail on 12.12.2024. The PW-2 was examined on 20.06.2024 and the PW-3/ Doctor, who examined the injured, deposed his testimony on 21.10.2024. During the aforesaid period, the applicant was in jail and the proper opportunity of cross-examination has not been afforded by the learned trial court.

5. Contention put forth by learned counsel for the applicant is that the finding, which is recorded for rejection of the application under Section 311 of Cr.P.C. in the impugned order, is evident that when the applicant was produced from the jail before the Court, during the argument by his counsel, he started shouting and asked his counsel not to argue in the matter and on such instructions, the learned counsel for the applicant stated before the

court that he would not further conduct this case, whereas the another finding has also been recorded in the same breath that there was another advocate for the applicant but it is apparent that because of the *paikar* did not call him, the opportunity of cross-examining the PW-2 and the PW-3 have been closed. He added that both the reasons assigned by the learned trial court while rejecting the application under Section 311 of Cr.P.C. is baseless and perverse. He submits that the PW-2 and the PW-3 are the important witnesses and closing the opportunity of cross-examination, in such a cursory manner, will cause acute prejudice to the applicant-accused.

6. In support of contention, he has placed reliance on a judgment reported in **[2019] 6 SCC 203, Manju Devi versus State of Rajasthan** and has referred the relevant paragraphs, which read as under:-

*"14. In **Manju Devi v State of Rajasthan, (2019) 6 SCC 203**, a two-Judge bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that "the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness". Speaking for the Court, Justice Dinesh Maheshwari expounded on the principles underlying Section 311 in the following terms:*

"10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to

anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595; *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999; *Mina Lalita Baruwa v. State of Orissa*, (2013) 16 SCC 173: (2014) 6 SCC (Cri) 218; *Rajaram Prasad Yadav v. State of Bihar*, (2013) 14 SCC 461: (2014) 4 SCC (Cri) 256 and *Natasha Singh v. CBI*, (2013) 5 SCC 741: (2013) 4 SCC (Cri) 828]. In *Natasha Singh v. CBI* [*Natasha Singh v. CBI*, (2013) 5 SCC 741: (2013) 4 SCC (Cri) 828], though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, *inter alia*, as under: (SCC pp. 746 & 748-49, paras 8 & 15)

"8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even *suo motu* if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of 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 opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of

rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case." (emphasis in original)"

7. Placing reliance upon the aforesaid judgment, he submits that it has been held that an application under Section 311 of Cr.P.C. could not be rejected, for the sole reason that the case had been pending for an inordinate period of time, unless there is some material which could indicate that the application is filed with intent to delay the proceedings of trial as the same cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record.

8. The discretionary powers enshrined under Section 311 of Cr.P.C. are essentially intended to ensure that every necessary and appropriate measure is taken by the court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned and also to ensure that no prejudice is caused to anyone. Thus submission is that the order impugned dated 23.06.2025 is against the settled proposition of law, and therefore, the same may be set aside.

9. Per contra, learned counsel appearing for the

opposite party no.2/ informant has vehemently opposed the contentions aforesaid and submits that the order impugned itself is enough to show that the applicant was called from the jail, though he himself has instructed his advocate not to argue in the matter. He submits that it is not a case where the opportunity of cross-examination was not afforded to the applicant-accused but he himself has chosen not to cross-examine the witnesses produced by the prosecution. He also submits that this is a dilly dallying practice and the same should be deprecated so that the speedy justice could be ensured to the victim. Therefore, submission is that no interference is warranted and the instant application may be dismissed.

10. Learned A.G.A. for the State has also supported the version of the counsel for the opposite party no.2 and submits that the reason assigned by the learned trial court for not entertaining an application under Section 311 of Cr.P.C. is justiciable. He added that the reason has been assigned in the impugned order that why the opportunity of cross-examination is being closed, and therefore, the applicant is not entitled for any relief.

11. Having heard learned counsel for the parties and after perusal of the record, it transpires that an application was moved by the applicant under Section 311 of Cr.P.C., which has been rejected vide order impugned dated 23.06.2025.

12. Section 311 of Cr.P.C. reads as under:-

"Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon 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."

13. The FIR was lodged on 27.02.2020 and the applicant was arrested by the police on 23.08.2023, whereafter he was released on 12.12.2024 and the admitted position is that on 20.06.2024 and 21.10.2024, the PW-2 and the PW-3 were summoned and the opportunity of cross-examination was afforded to the applicant-accused. From perusal of the finding of the trial court, it transpires that when the applicant-accused was produced before the trial court, he instructed his counsel not to argue in the matter and, under such circumstances, the trial court asked the *paikar* to call another counsel, but once the next counsel did not appear before the court, the opportunity of cross-examination was closed.

14. The applicant-accused was produced before the trial court from jail and once he had instructed his counsel not to argue in the case, the opportunity of cross-examination was closed but in real sense this can not be a reason so as to close the important stage of a trial, not affording an opportunity of cross-examination. The another finding is that the *paikar* did not call the another advocate, whose name was printed in

Vakalatnama but again it is not understandable that since the applicant was under custody and was brought from jail, therefore, the things were not in control of him thus, an opportunity should have been given by the learned trial court with respect to the appearance of another counsel, or it should have been asked by the learned trial court to the accused that whether he wants another counsel or any amicus in his case, which is also missing apparently from the order impugned.

15. This court finds that the scope and object of the provision is to enable the court to determine the truth and to discover all relevant facts to arrive at a just decision of the case which in fact is the paramount goal of a trial. The intent of the legislature is very obvious from bare reading of Section 311 of the court as the court can summon and examine or recall and re-examine a person, if evidence appears to be essential for the just decision. In fact, the word 'essential' deliberately finds place in the provision as the court is duty bound to satisfy the essentiality with reasons, meaning thereby that if the court is either passing the order for recall or re-examine any person in evidence or rejecting/ declining such request of either the parties, reason must have to be recorded as the opportunity of cross-examination is one of the most important stage and failing which, certainly prejudice would be caused.

16. This court is also aware that the power conferred under Section 311 of Cr.P.C. which could

be invoked by the court only in order to meet the ends of justice, for strong and valid reasons as per the settled law, but at the same time, the court while dealing with the application under Section 311 of Cr.P.C., should be cautious enough that while denying any opportunity, no prejudice is caused to anyone. So far as the present case is concerned, the PW-2 and the PW-3 are the important witnesses, and therefore, the opportunity of cross-examination of both the witnesses is must, which is missing in the present case.

17. Hence, without expressing any view on the merits of the trial, the order impugned dated 23.06.2025 passed on an application, under Section 311 of Cr.P.C., by the learned trial court is unsustainable, resultantly, the same is hereby set aside.

18. Consequently, learned trial court is directed to afford the opportunity of cross-examination of both the witnesses, PW-2 and PW-3, by fixing a suitable date. It is provided that if the appellant (accused) does not cooperate or appear before the learned trial court on the date fixed by the learned trial court, liberty is granted to the trial court to proceed in accordance with law.

19. The application is **allowed** accordingly.

Order Date :- 8.8.2025
Mohd. Sharif