

**IN THE COURT OF SH. DINESH BHATT
PRINCIPAL DISTRICT & SESSIONS JUDGE-CUM-SPECIAL
JUDGE (PC ACT) CBI ROUSE AVENUE DISTRICT COURTS
NEW DELHI**

**CNR No. DLCT11-000629-2024
RC218/2023/A0011/CBI/AC-III/New Delhi
CBI vs Manjit Singh & Ors.
CBI No.100/2024**

IA no. 09/2026

30.05.2026

ORDER

1. This is an application filed on behalf of accused Puneet Duggal (A-2) under Section 348 BNSS for recalling two witnesses i.e. Ravinder Sharma (PW-9) and Jayesh Bhardwaj (PW-53) for further cross-examination on the ground that they had earlier not been effectively cross examined.
2. Reply to the application has been filed by the CBI.
3. Arguments heard.
4. Ld. Counsel for the applicant has stated that PW-9 was one of the main witness and during his cross examination, he had mentioned that he had received the address for delivery of articles. He had collected Rs. 25 Lakhs and handed over it over to the said accused and confirmed the handing over through mobile phone with accused Puneet Duggal and another. He identified accused Puneet Duggal in the court. He stated that previous counsel inadvertently

omitted the crucial questions during the cross examination on material aspects i.e. the alleged transactions involving Rs.25 Lakhs which remained unchallenged. The precise date, time and circumstances of the alleged delivery, the inconsistencies between the statement of PW-9 recorded u/s 161 and 164 Cr.P.C. and his deposition in court. In regard to PW-53, it is stated that he was an expert and had analyzed the questioned voices with the sample voices but it is stated that his testimony on key technical and procedural aspects remained unaddressed i.e. no questions were raised regarding quantitative measurement or calculation methods used in analysis. No questions were raised regarding ROC which indicates accuracy levels of identification. No examination of spectrographic techniques and speaker identification principles etc. was done.

5. The applicant has also relied on the following judgments in support of his case:

- i) **P. Sanjeeva Rao v. State of A.P., AIR 2012 SC 2242.**
- ii) **Hanuman Ram v. State of Rajasthan, (2008) 15 SCC 652**
- iii) **Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271.**

6. Ld. Sr. PP for CBI has stated that the applicant was trying to recall the witnesses after the change of the counsel and mere change of counsel is not a ground for recalling the witnesses. He stated that the witnesses have been

elaborately cross examined and as far as PW53 is concerned they have cross examined the witness after four months and therefore they had ample time for preparation of their cross examination. It is stated that there is no ground on merit and the application was being filed only to delay the case. He has relied on **AG v Shiv Kumar Yadav & Ors., 2015 INSC 654** in support of his contentions.

7. In regard to the principles required to be seen while considering the application u/s 311 Cr.P.C/348 BNSS, the Hon'ble Supreme Court of India in **Rajaram Prasad Yadav v. State of Bihar & Anr., 2013 (14) SCC 461** has held that:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?*
- b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of*

the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from

correcting errors and that 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.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. 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 care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the

persons concerned, must be ensured being a constitutional goal, as well as a human right.”

8. The Hon’ble Supreme Court in **Natasha Singh Vs. CBI, Crl. Appeal No. 709/2013** has held in para 14:

“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 u/s 311 Cr.P.C. 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”.

9. In **P. Sanjeeva Rao v. State of A.P., Crl. Appeal No. 874-875/2012**, the Hon’ble Supreme Court has held relying on the judgment of **Hanuman Ram v. The State of Rajasthan & Ors. (2008) 15 SCC 652** 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.

10. Thus, the essence of the principles which are required to be followed by the court while considering the application u/s 311 Cr.P.C. are that a court has vast powers to summon,

resummon, examine, reexamine any witness, if it is considered to be required for the just decision of the case. But the power has to be exercised judiciously and not to be allowed only to fill up the lacuna in the case.

11. As far as the witnesses in question are concerned, record reveals that both witnesses have been elaborately cross examined (cross examination of PW-53 conducted on behalf of accused 1 and 3 was adopted on behalf of the present applicant) and there is nothing shown from record to suggest that the aforesaid two witnesses were deliberately not cross examined on the facts stated by the applicant in his application. Thus, the only ground which is being made out in the application for recall of the witnesses is that they were not effectively cross examined by the earlier counsel. This issue would however be a subjective issue and if the witnesses are allowed to be recalled only on the said ground then it would be an open issue for all subsequent counsels to recall witnesses claiming that as per their assessment the witnesses have not been effectively cross examined by the earlier counsel. This issue has however already been clarified by the Hon'ble Supreme Court in **AG v. Shiv Kumar Yadav & Anr. AIR 2015 SC 3501** where in para no. 36 it has been held that:

“It may be noted that the defence of an under trial is not expected to vary from counsel to counsel and irrespective of change of counsel, an under trial is expected to have a single and true line of defence which cannot change every time

he changes a counsel. Nor can a new counsel defend the case of such an under trial as per the new scheme and design in accordance with his acumen and legal expertise.”

12. As already discussed, the witnessess PW-9 & PW-53 have already been elaborately cross examined on behalf of the accused/applicant and recalling of witnesses on the ground of change of counsels subjective assessment cannot be a sole ground for recalling witnesses. Accordingly, there is no merit in the application which is dismissed. Be tagged with main file.

	(Dinesh Bhatt)
Announced in open Court	Principal District & Sessions Judge
on 30 th May,2026	cum-Special Judge (PC Act) (CBI),
	Rouse Avenue District Court
	New Delhi/30.05.2026