

IN THE COURT OF SHRI HASAN ANZAR,
SPECIAL JUDGE, PC ACT (CBI-03),
ROUSE AVENUE DISTRICT COURT, NEW DELHI

CBI Vs. Rakesh Kumar Mishra @ Laddu Baba & Ors.

CC No. 382/2019

Date of Institution: 31.08.2009

IA No. 09/2026

13.04.2026

ORDER

IA No. 09/2026

1. This order shall dispose Third Application u/s 348 BNSS (Corresponding to Section 311 CrPC) moved on behalf of Prosecution inter-alia contending that in view of the death of LW-57 Sh. Raj Kamal Seth, the Prosecution is intending to prove the fraudulent transactions and related documents i.e. D-66 to D-73 which contains the signature of deceased employee of bank i.e. Sh. Raj Kamal Seth.

2. It is contended that Sh. V.K. Gupta, the then Customer Care Officer, Punjab National Bank, Ramnagar Branch, Roorkee was working with late Sh. Raj Kamal Seth (LW-57) and had also dealt with D-67 and therefore, acquainted with the signature of Sh. Raj Kamal Seth and therefore, competent to prove D-66 to D-73.

3. In the application, the prosecution has relied (i) Zahira Habibullah Sheikh Vs. State of Gujarat (2004) 4 SCC 158, (ii) Natasha Singh Vs. CBI (Crl. Appeal No. 709 of 2013) and (iii) P. Sanjeeva Rao Vs. State of Andhra Pradesh (Crl. Appeal Nos. 874-

875 OF 2012 (Arising out of S.L.P (Crl.) Nos.4286-87 OF 2011) of Hon'ble Supreme Court of India.

4. None of the accused persons had filed reply to the application and moreover, Id. Counsels for A-2, A-10 and A-17 have expressed their no objection and left it to the discretion of the Court to pass an appropriate order. Remaining accused persons as well as A-4, A-6, A-7, A-12 and A-16 have opposed the application and contended that this application is presumably for the Substitution of Mr. Tuli who was dropped by Id. PP for CBI by submitting that he cannot identify the signatures of Kamal Seth as he had not worked in the same branch. Id. Counsel further submits that Sh. Sandeep Bagril was already examined by the prosecution. It is further submitted that application is filed to fill up the lacunae and is intended to delay the proceedings at the fag end of the trial. It is further submitted that by moving the present application, the prosecution is intending to substitute one witness with another and same is not permissible u/s 348 BNSS, 2023 (*corresponding to Section 311 CrPC*).

5. In support of their contention, Id. Defence Counsel for A-4, A-6, A-7, A-12 and A-16 has relied upon following judgments- (i) Archana Chaudhary vs. Harsh Dawar, (CRL.M.C. 1412/2025 & CRL.M.A 6248/2025) (ii) Kamlesh Diwakar vs. State of M.P. (CC No. 11021/2016) (iii) Bachan Singh vs. State of Punjab & Anr. (CRM-M No. 16763/2025).

6. I have considered the submissions made by both the sides.

7. By the detailed order dated 20.02.2026, the prosecution was permitted to examine Sh. Praveen Kumar Tuli and Sh. Sandeep Bagril in relation to the documents D-66 to D-73, D-115 to D-118 and D-121 to D-129. The relevant part of the order dated 20.02.2026 are as follows:-

9. Perusal of the document i.e. D-66 to D-73, D-115 to D-118 and D-121 to D-129 would reveal that document are basically Account Opening Form, Cheques, Vouchers etc. which were dealt by the deceased witnesses during their course of employment with the concerned bank and as per Prosecution, the proposed witnesses were working with deceased employees and as such they are conversant with their signatures and handwriting.

10. The contention of Ld. Counsel for the accused persons that due to lapse of time, the proposed witnesses will not be in a position to identify the signatures and handwriting of deceased witnesses as the documents are more than 18-19 years old and exercise to get identify the signatures and handwriting is an attempt on the part of Prosecution to fill the lacunae. In this regard, it is observed that whether witnesses were/are able to identify the signatures of deceased employees is an issue that is to be considered at an appropriate stage which is essentially based on the testimonies of the proposed witnesses examined by the Prosecution and at this stage the Prosecution cannot be stopped from bringing the necessary witnesses for the purposes of identifying the signatures and handwriting on the documents.

11. In so far as the apprehension of the Ld. Counsel for accused persons that new facts would be introduced by the Prosecution. It goes without saying that examination of the proposed witnesses are only confined to the aforesaid exercise of identifying the signatures and handwriting of the deceased employees and whether the document has been proved or its content has been proved shall be considered at an appropriate stage.

8. Pursuant to order dated 20.02.2026, Sh. Sandeep Bagril was examined in reference to the documents D-115 to D-118 and D-121 to D-129. The statement of Sh. Praveen Kumar Tuli was not recorded as it is conveyed by the Id. PP for CBI that the said witness is unable to identify the handwriting of the cited witness Sh. Raj Kamal Seth.

9. The present witness who is proposed to be examined by the prosecution is Sh. V.K. Gupta and as per Paragraph No. 4 of the the application, the following reason is given:-

“4. That due to the untimely demise of the above-said witness, the relied upon documents could not be proved. The same documents may, however, be proved by other bank official namely Sh. V.K. Gupta, the then Customer Care officer, Punjab National Bank, Ramnagar Branch, Roorkee and resident of 352-Gandhi Nagar, Roorkee, Pin-247667, who had worked with the deceased witness during the relevant period i.e. 2008, and is acquainted with the signatures of the deceased witness, and are fully competent to prove the documents already placed on record (D-66 to D-73). Also, he had processed and verified under his signature, one of the document i.e. Account Opening Form and signature card of M/s Jai Ganga Construction Co. (D-67).

10. Ideally the prosecution should have been vigilant in moving the application for examining the witness qua the documents D-66 to D-73 at the first instance. The question is whether the application moved by the prosecution is in the nature of substitution of the witness or not as contended by the Id. Defence Counsel.

11. At the first place, it is noted that the need to examine the witness has been occasioned due to the demise of the cited witness Sh. Raj Kamal Seth and Praveen Kumar Tuli who is proposed to be

examined was not examined as he was not conversant with the handwriting and signatures and the present witness is proposed to be examined in relation to the document containing handwriting and signature of the deceased as well as his own signatures in D-67.

12. Taking into account that the documents were already available on record and in order to prove the documents or to rely the documents, the testimony of the witness is required to be noted qua the documents. Although some delay has been caused, however, the said delay is certainly overshadowed by the consideration that documents are essential for the just decision of the case. The delay/inconvenience in examining the witness can be remedied by imposing reasonable cost. The case of prosecution is primarily based on various documentary evidence and the cited case i.e. ***Bachan Singh (Supra)*** by Id. Defence Counsel is not applicable in reference to the present case as in the said case, an FIR against the opposite party was not made part of the record of the case whereas, in the present case the documents were already part of record.

13. Hon'ble Delhi High Court in **Sonu Vs. Central Bureau of Investigation, CrI. MC 1309/2023 dated 17.02.2025** has considered plethora of judgments of Hon'ble Supreme Court relating to the exercise of power under section 311 CrPC and was please to observe:-

52.The crux of the aforesaid judicial precedent reinforces the broad discretionary powers conferred upon courts under Section 311 of the CrPC, emphasizing that the primary duty of a court is to ensure that no relevant evidence is excluded from consideration if it is essential for a just decision of the case.

53.The Hon'ble Supreme Court has consistently held that procedural constraints must not prevent the courts from exercising its inherent powers to recall witnesses or summon additional evidence when necessary to arrive at the truth. The guiding principle remains that a trial should not result in an inchoate or speculative decision due to an incomplete evidentiary record, and the courts must exercise their discretion judiciously to summon or recall witnesses if the evidence sought to be introduced is germane to the just determination of the case.

14. It was further observed in **Sonu (Supra)**:

67.Further, it is essential to distinguish between a genuine violation of right to a fair trial and a situation where a party merely loses the benefit of a procedural lapse. The key question is not whether the accused's tactical advantage has been diminished but whether they have been deprived of the fundamental safeguards of cross-examination, rebuttal or access to the evidence.

68.However, this Court finds that no prejudice has been caused to the accused/petitioner in the present case. The submission of the complete document does not introduce any new facts or allegation but only provides a complete version of a document that was already in the case record. Furthermore, the accused will be given the opportunity to cross-examine the re-called witnesses regarding the additional details in the document and thus, the ability to test the evidence through cross-examination defeats any claim of procedural unfairness.

15. It goes without saying that examination of the proposed witness is only confined to the aforesaid exercise of identifying the signatures and handwriting of the deceased employee and whether the document has been proved or its content has been proved shall be considered at an appropriate stage.

16. In view of the above mentioned discussion as well as taking into consideration the totality of the facts and circumstances, the application u/s 348 BNSS/311 CrPC is allowed. The prosecution is

permitted to examine Sh. V.K. Gupta subject to the payment of cost of Rs. 5,000/- to be deposited with DSLSA, RADC, New Delhi, Receipt be filed within a week. It is further clarified that not more than one opportunity shall be provided to the prosecution to examine the aforesaid witness. It is also clarified that examination of witness Sh. V.K. Gupta would not be a ground to seek an adjournment or deferment of recordal of statement of IO/PW-121 Suman Kumar.

17. With these observations, the application (*IA No. 09/2026*) stands disposed of.

*(Announced in the Open Court
today i.e. on 13.04.2026)*

(HASAN ANZAR)
Special Judge (PC Act) CBI-03
RADC/New Delhi/13.04.2026.