

BRINDAVAN SAHOO VS. M/S S.B. DEVELOPERS

Present: Sh. Rishi Pal Sharma, Advocate for the
applicant/complainant.
Respondent/accused on bail with Sh. Vikash Gourav Sharma,
Advocate.

1. Vide this order, the application filed by applicant/complainant for further examination of witnesses namely Santosh Sahoo and Sibbhu Sahoo is disposed of as allowed.

2. Shorn of unnecessary details, the brief facts of the present application are that the applicant/complainant has already been examined as a witness in the present case and now he wishes to examine his sons namely Santosh Sahoo and Sibbhu Sahoo to prove the present case. It is also stated in the application that there exists an agreement between the accused and the complainant's sons which is already on record. It is also stated in the application that the above stated witnesses are very much essential to prove the present complaint.

3. Reply to the present application is filed by respondent/accused. It is stated in the reply that the present application is not maintainable either in law or on facts and is liable to be dismissed. It is also stated in the reply that it is an admitted position that the applicant/complainant has already closed his evidence and the applicant/complainant cannot now be permitted to fill up the lacunae in his case. It is also stated in the reply that the present matter is already at the stage of defence evidence and allowing the present application would seriously prejudice the rights of the accused and defeat the settled principle of fair trial. It is also stated in the reply that the applicant/complainant had ample opportunities to produce all relevant documents, including the alleged bank statement and to examine any witnesses including his sons at the appropriate stage.

4. Both the ld. counsels have argued in lines with the application and reply to the application respectively.

5. At this stage, it is relevant to go through the provision of Section 348 Cr.P.C. provides that :

“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 be essential for the just decision of the case”.

6. It is trite law that the power under Section 348 Cr.P.C. is discretionary in nature and the same is given to the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted thereunder, any court by exercising its discretionary power at any stage of inquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any witness. In **Zahira Habibullah Shekh Vs. State of Gujarat (2006) 3 SCC 374**, the Hon’ble Apex Court had held 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 for 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 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 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.

7. By virtue of the present application, the applicant/complainant wishes to examine the witnesses namely Santosh Sahoo and Sibbhu Sahoo. As per para No.4 & 5 of the complaint, it is specifically mentioned that the respondent/accused on behalf of his real son of the complainant in the presence of witnesses had issued two separate receipts in favour of the complainant namely Santosh Sahoo and Sibbhu Sahoo. Therefore, the role of the above mentioned witness is specifically mentioned by the complainant in the complaint. In the opinion of this court, the examination of witnesses are necessary in order to determine the matter and to effectively adjudicate the case in hand. Consequently, the application is disposed of as allowed.

8. This order shall not affect merits of the case. Now, to come up on **06.08.2026** for further proceedings.

Date of Order: 17.07.2026
*reetu kumari**

(Himani Sagar)
Judicial Magistrate - Ist Class
Faridabad/UID NO . HR0601

Present: Sh. Rishi Pal Sharma, Advocate for the
applicant/complainant.
Respondent/accused on bail with Sh. Vikash Gourav Sharma,
Advocate.

Order pronounced. **Vide separate order of even
date, application filed by applicant/complainant for further
examination of witnesses namely Santosh Sahoo and Sibbhu
Sahoo is disposed of as allowed.**

Now, to come up on **06.08.2026** for further
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(Himani Sagar)
Judicial Magistrate - Ist Class
Faridabad/UID NO . HR0601