

**In the Court of Ms. Gurpreet Kaur, Judicial Magistrate Ist
Class, Ajnala (UID No.PB-0471).**



102 State VS. Gurjit Singh

CHI-102-2017

Present: APP for the State.
Sh.Mandeep Singh Mohar Advocate Counsel for complainant.
Accused Gurjit Singh on bail with Counsel Sh.Sukhchain Singh
Bhatti Advocate.

ORDER

1. This order of mine shall dispose off an application U/s 311 Cr.P.C. filed by the Ld. A.P.P. for State for summon material witnesses in the present case.
2. The prosecution has submitted that in the present case, CT head of injured Surinder Singh was conducted by Dr.Suruchi Chopra, Additional Director Radiology, Fortis Escorts Hospital, Majitha Verka Bypass Road, Amritsar. Similarly, the applicant/complainant and her wife Sukhjit Kaur were admitted in Hardas Singh Orthopedic Hospital & Super Specialty Research Centre, 882, Circular Road, Amritsar on 12.11.2016 and 07.10.2016 respectively, where the applicant/complainant Surinder Singh son of Sardool Singh was operated for fracture for ribs, clavicle med and fracture right and left ribs. Similarly, Sukhjit Kaur wife of Surinder Singh complainant was also diagnosed of Superior Tamus on public bone and bilateral lamina C-4 fracture with hepatic contusion and she was discharged on 18.10.2016 and Surinder Singh was discharged on 26.11.2016, but inadvertently the names of the said doctors have not been mentioned in the list of witnesses. However, the said witnesses are very much essential and necessary to be examined along with the record of Surinder Singh son of Sardool Singh and Sukhjit Kaur wife of Surinder Singh regarding their injuries and admission & discharge record for the proper adjudication of the present case. It is further submitted that the complainant wants to summon and examine the aforesaid material witnesses as

in the absence of the examination of the said witnesses, the present matter cannot be adjudicated properly and effectively. Lastly, he prayed that application may kindly be allowed and witnesses i.e. (I) Dr.Suruchi Chopra, Additional Director Radiology, Fortis Escorts Hospital, Amritsar along with record pertaining to CT head of injured Surinder Singh, having study date 07.10.2016 and Accession No.IP.1323873.362 and (ii) Concerned authorized person/official of Hardas Singh Orthopaedic Hospital & Super Speciality Reserach Centre, 882, Circular Road, Amritsar along with record of Surinder Singh son of Sardool Singh and Sukhjit Kaur wife of Surinder Singh regarding their injuries and admission & discharge record as detailed above, may kindly be summoned in the interest of justice, equity and fairplay.

3. Reply was filed by the accused, in which he has submitted that the present application is not maintainable and applicant has filed the present application just to fill up the lacuna and to waste the precious time of this Hon'ble Court. All the allegations are denied and prayer for dismissal of the application is made.

4. After hearing the contentions of both the parties and perusal of the record, the court is of the considered and confirmed view that the power under Section 311 Cr.PC is to be used as the exigencies of justice require. The power under Section 311 Cr.P.C. is vested to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of the justice. It is obligatory on the part of the Court to summons the witnesses in case their evidence appear to be essential for just decision of the case and such power may be exercised at any time. Reliance can be placed upon **Ram Chander Vs. State of Haryana, AIR 1981 (SC) 1036**, wherein it has been held that, "Power of the Court is Plenary to summons recall any witness and at any stage of the case if the Court considered is necessary for just decision". Reliance can be placed upon **Randhir Singh Vs. State of Punjab and Ors, 2020(1) Criminal Court Cases 782 (P&H)**, wherein it has been held that, the section is manifestly in two parts. Whereas the word used in the first para is "may", the second part uses "shall". In

consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts”.

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 of 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 the 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 any 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.”

It is now well settled that application under section 311 of the Cr.P.C for summoning of witnesses can be filed at any stage of trial even after final arguments but before the pronouncement of judgment and mere delay is not decisive of the question of summoning of witnesses. In **Mohan Lal Shamji Soni Vs. Union of India & Anr 1993(3) RCR(Criminal) 182**, it was held that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both the sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation and fair play and good sense appear to be the only safe guides and that only requirements of justice command the examination of any person which would depend on the facts and circumstances of each case. So the bare reading of section 311 of the Cr.P.C reveals that it is of very wide amplitude and if there was any negligence, laches or mistake by not examining material witnesses, the court’s function to render just decision by examining such witnesses at any stage is not, in any way, impaired and no party in a trial can be foreclosed from correcting errors and if proper evidence is not adduced or a relevant material is not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

In **Rajaram Prasad Yadav Vs. State of Bihar and another, 2013(3) Criminal Court Cases 568(S.C.): 2013(2) Apex Court Judgments 604(S.C.): 2013(3) RCR(Criminal) 726**, Hon’ble Supreme Court in para No.23 of its judgment culled out certain principles which are to be kept in mind while exercising power under Section 311 Cr.P.C which is reproduced as under:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code 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 needed by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code 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 that 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. Similar view is held in **Suresh Kumar Vs. State of Haryana and Anr, 2020(1) Criminal**

Court Cases 095 (P&H). So, for proper and effective adjudication of the case and in the interest of justice, the application in hand is allowed and summons against witnesses along with record mentioned in the application be issued for 02.05.2022. Only one opportunity is granted to the prosecution for this purpose.

Pronounced: 18.04.2022.

(Chetan, Stenographer Grade-III)

(Gurpreet Kaur)
Judicial Magistrate Ist Class, Ajnala.
UID No.PB-0471.