

SC. 364/08 (CIS 869/14)

(Arising out of Samuktala PS Case No. 418/2008 dated 22.08.2008)

Order dated 16.07.2025

Today is fixed for argument.

Accused Suphal Mahali is produced from Alipurduar DCH.

Ld. P.P. in charge and Ld. Advocate for the accused are present.

The application is filed by the Ld PP in charge under section 311 Cr PC

The prosecution has prayed for recall of prosecution witness PW 13, Sudhni Mahali for the purpose of further examination in connection with her statement before the Ld Judicial Magistrate which is important for this case and for examination of the Ld Judicial Magistrate who has recorded the statement of Sudhni Mahali.

Heard the submission made by the Ld PP in charge and the Ld Advocate for the accused.

The order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr PC. It is imperative that the invocation of Section 311 Criminal Procedure Code and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case.

The Hon'ble Apex Court in Rajaram Prasad Yadav vs State of Bihar and another 2013 (14) SCC 461 has laid down the following principles while dealing with an application under section 311 Cr PC read with 138 of the Evidence Act:

"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 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 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 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.

Keeping the above principles in mind, we need to examine the case on hand. The power conferred under section 311 Cr PC is a discretionary power which should be invoked to meet the end of justice. It is found that the prosecution has examined the witness PW 13, the lodger of the FIR of this case at a length. It is submitted by the prosecution that certain questions are required to be put to the witness in connection with her statement recorded before the Ld Judicial Magistrate for the purpose of fair trial. It is the task of the court to provide substantial justice both the accused and the complainant and to balance the interest of accused and complainant. The prayer of the prosecution appears to be an innocuous one and necessary for the purpose of the fair trial.

Considering the above aspect, the prayer of the prosecution under section 311 Cr PC is allowed.

Fixing 31.07.2025 for evidence of PW 13 under section 311 Cr PC on recall. and the Ld Judicial Magistrate 2nd Court, Alipurduar, Sri Ambarish Ghosh under section 311 Cr PC.

Accused as before

The trial of the instant case is pending for more than ten years.

Issue summons through Nodal Officer, Alipurduar.

Let a copy of the order be sent to the Nodal Officer, Alipurduar

Addl. Dist. & Sessions Judge,
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,
1st Fast Track Court, Alipurduar.

