

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1061 of 2025**

Ram Prasad Mahto, aged about 62 years, S/o Shri Sanichar
Mahto, R/o village Koiridih, Suriya, P.O. Koiridih P.S. Suriya,
District Giridih.

... Petitioner

Versus

1. The State of Jharkhand
2. Shyam Lal Mahto, S/o Late Dumar Mahto, R/o village
Koiridih, Suriya, P.O. Koiridih P.S. Saria, District Giridih

... Opposite Parties

For the Petitioner : Mr. Lukesh Kumar, Advocate
For the State : Mr. Rajesh Kumar, Addl.P.P.
For the OP No.2 : Mr. Vishal Kumar Trivedi, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the B.N.S.S., 2023 with the prayer to quash the order dated 25.02.2025 passed in M.C.A. No.183 of 2025 in Sessions Trial No.78 of 2011 by the learned Additional Sessions Judge-II, Giridih arising out of Saria P.S. Case No.299 of 2004 whereby and where under the learned Additional Sessions Judge-II, Giridih has allowed the petition filed under Section 311 of the Code of Criminal Procedure for adducing additional evidence.

3. The brief fact of the case is that Sessions Trial No.78 of 2011 of the court of learned Additional Sessions Judge-II, Giridih was fixed for recording of the statement of the accused under Section 313 of the Code of

Criminal Procedure. A petition was filed on behalf of the prosecution under Section 311 of the Code of Criminal Procedure mentioning therein that one injured person of the occurrence namely Jay Prakash Verma, the eye-witnesses namely Doman Mahto and Jagdish Pandey, a Medical Officer who furnished the injury report as well as the Investigating Officer of the case have not been examined and their examination is essential for the just decision of the case. It was further submitted that one Nathu Mahto who has also put his signature on the *fardbeyan* and was present at the time of recording of the *fardbeyan* of the informant, even though has not been cited as the witness in the charge-sheet; is also required to be examined for the just and fair decision of the case. The learned Additional Sessions Judge-II, Giridih considered the settled principle of law referring to various judgments of constitutional courts, to the effect that the power under Section 311 of the Code of Criminal Procedure can be exercised when it is essential for the just decision of the case and by considering the same, the learned Additional Sessions Judge-II, Giridih allowed the said petition and directed the prosecution to present the witnesses by next five dates on its own efforts; failing which, the evidence of the prosecution shall be considered to be closed.

4. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Rajaram Prasad Yadav Vs. State of Bihar & Another** reported in (2013) 14 SCC 461 and submits that the Hon'ble Supreme Court of India has summarised the principles that have to be borne in mind of the courts while dealing with the application

under Section 311 of the Code of Criminal Procedure along with Section 138 of the Evidence Act, para-17 of which reads as under:-

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

17.1. 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?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. 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.

17.4. The exercise of power under Section 311 CrPC 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.

17.5. 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.

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

17.7. 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.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. 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.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, 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.

17.11. 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.

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

17.13. 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.

17.14. The power under Section 311 CrPC 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."

and submits that no reason has been assigned by the learned Additional Sessions Judge-II to exercise the power under Section 311 of the Code of Criminal Procedure. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

5. Learned Addl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner made in this Criminal Miscellaneous Petition. Learned counsel for the opposite party No.2 relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Zahira Habibullah Sheikh (5) & Another Vs. State of Gujarat & Others** reported in (2006) 3 SCC 374 para-27 of which reads as under:-

"27. 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." (Emphasis supplied)

and submits that it has categorically been mentioned therein, that determinative factor for exercising the power under Section 311 of the Code of Criminal Procedure is whether it is essential to the just decision of the case.

6. The learned counsel for the opposite party No.2 next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Ratanlal Vs. Prahlad Jat & Others** reported in (2017) 9 SCC 340 para-17 of which reads as under:-

"17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order."

and submits that therein, it has been categorically reiterated by the Hon'ble Supreme Court of India that the object of the provision as a whole is to do justice not only from the point of view of the accused-prosecution and also from the point of view of an orderly society.

7. Learned counsel for the opposite party No.2 further relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Varsha Garg Vs. State of Madhya Pradesh & Others** reported in (2023) 19 SCC 646 para-36 of which reads as under:-

"36. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realisation of justice is manifest." (Emphasis supplied)

and submits that the power of the court is not constrained by the closure of evidence.

8. Learned counsel for the opposite party No.2 also relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Harendra Rai Vs. State of Bihar & Others** reported in (2023) 13 SCC 563 and submits that in para-128 of the said judgment, the Hon'ble Supreme Court of India has, in no uncertain manner, held that logic behind Section 311 of the Code of Criminal Procedure is that the endeavours of the court is to find out the truth, which would be essential of the just decision of the case. It is next submitted that since in the impugned order, the learned Sessions Judge has also mentioned that the power under Section 311 of the Code of Criminal Procedure can be exercised when the evidence to be put forth by the

witness called is for the just decision of the case, so, it is obvious that the learned Additional Sessions Judge-II, Giridih has allowed the examination of the witness for the just decision of the case and it is not even the case of the petitioner, who is the accused person of the case that the evidence sought to be put forth by the prosecution through the seven witnesses sought to be examined; which has been allowed by the learned Additional Sessions Judge-II, Giridih, is not for the just decision of the case. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

9. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the records, it is pertinent to mention here that it is a settled principle of law that if the evidence sought to be put forth by a party filing a petition under Section 311 of the Code of Criminal Procedure is such that the examination of such witnesses will be for the just decision of the case, such witnesses be permitted to be examined by the court concerned.

10. Now coming to the facts of the case, the undisputed fact remains that the 6 out of 7 witnesses whose examination has been permitted by the learned Additional Sessions Judge-II, Giridih are the witnesses, whose names have been mentioned in the charge-sheet including one of the injured persons. It is neither the case of the petitioner nor is it in dispute that the examination of the seven witnesses sought to be examined by the prosecution, are for the just decision of the case. Though the learned Additional Sessions Judge-II, Giridih has not explicitly stated in so many words that allowing the petition under Section 311 of the Code of Criminal

Procedure is because of the reason that the evidence of such witnesses being necessary for the purpose of just decision of the case; but the reference to the various judgments of the constitutional courts, in the impugned order itself are only to the aforesaid effect and the trial court in the impugned order, has also mentioned that he is exercising the power in view of the law laid down by such judgments referred to the effect that the power under Section 311 of the Code of Criminal Procedure can be exercised when the evidence sought to be produced is for the just decision of the case.

11. From the discussions made above, it is obvious that the learned Additional Sessions Judge-II, Giridih has exercised the power under Section 311 of the Code of Criminal Procedure as the evidence sought to be produced through the witnesses are for the just decision of the case. Undisputedly one of them is an injured witness of the alleged occurrence. There are two eye-witnesses to the occurrence, other expert witnesses and the I.O. of the case as well as the persons whose signature also appears in the *fardbeyan*.

12. Under such circumstances, in the absence of any contention of the petitioner that the examination of the seven witnesses which has been allowed by the learned Additional Sessions Judge-II, Giridih to be examined is not for the just decision of the case and considering that the one of the witnesses is an injured witness, 2 of them are eye-witnesses to the occurrence and the rest of the witnesses are expert witnesses whose name appears in the charge-sheet; this Court is of the considered view that no illegality has been committed by the learned Additional Sessions Judge-II,

Giridih in allowing the petition under Section 311 of the Code of Criminal Procedure.

13. Accordingly, this Criminal Miscellaneous Petition, being without any merit, is dismissed.

14. In view of disposal of this Criminal Miscellaneous Petition, I.A. No. 8591 of 2025 and I.A. No. 11558 of 2025 are disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th of September, 2025
AFR/ Saroj