

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3736 of 2022

Union of India through C.B.I, ACB, Dhanbad, represented by Raghunath Singh aged about 49 years, son of late Gaja Nand Kumar presently residing at Inspector of Office of SP CBI, ACB, R/Q No. B-30, Sector XI T.V. Center Koyla Nagar BCCL Township Dhanbad P.O. and P.S. Koyla Nagar, District Dhanbad

..... ...Petitioner

Versus

1.M/s Jindal Steel Products Run by the Mahabir Prasad/ son of Rishi Ramjindal, Lal Bazar Street, Room No. 316, Kolkata-1, P.O. and P.S. Lalbazar, District-Kolkata (W.B.)

2. Mahesh Kumar Jindal, son of Shree Rishi Ram Jindal, Age 42 R/O AD-85 Bidhan Nagar, P.O. and P.S. Bidhan Nagar, Salt Lake Kolkata, West Bengal District -Kolkata, West Bengal

..... ... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner

:Mr. Prashant Pallav, Spl. PP. CBI

For the O.P. No.2

: Mr. Mahavir Pd. Sinha, Advocate

12/ 16.09.2025: Heard learned counsel for the petitioner and learned counsel for the O.P. No.2. Notice upon O.P. No. 1 has already been effected.

2. This criminal miscellaneous petition has been filed challenging the order dated 24.06.0222 passed by the learned SDJM-cum-Special Magistrate, C.B.I, Dhanbad in R.C-06(A)/2001-D, whereby the learned court has been pleased to reject the petition filed by the petitioner under section 311 of Cr.P.C, corresponding section 348 of BNSS, 2023, pending in the Court of learned Special Judicial Magistrate, C.B.I., Dhanbad.

3. Learned counsel for the petitioner submits that F.I.R. has been registered inter alia that during the period 1993-98, M/s Jindal Steel Products, 2, Lal Bazar Street, Kolkata and others as well as unknown officials of Punjab National Bank, Kolkata and others by entering into a criminal conspiracy and dishonestly and fraudulently cheated the Indian Railways and Punjab National Bank, Kolkata by abusing their official position while working as public servants and allowed and facilitated M/s Jindal Steel Products to draw steel and zinc from the Railway Electrification Store Depot, near Nagpur

on the basis of five numbers of forged and fabricated bank guarantee amounting to Rs. 49,77,000.00 and thus caused wrongful gain to M/s Jindal Steel Products.

4. He submits that in this background the F.I.R has been registered which has been investigated by the C.B.I and chargesheet has been submitted and materials have been brought as stated in paragraph nos. 5 to 11 of the Cr.M.P. He further submits that during trial prosecution has examined 25 witnesses out of cited 29 witnesses in the chargesheet. He submits that the learned SDJM-cum-Special Magistrate has closed the prosecution evidence on 04.05.2022 and I.Os/PWs namely, Shri B.K. Birdi, D.K. Mukherjee and Sudhanshu Shekar have not been examined and in this background the petitioner filed a petition under section 311 of Cr.P.C corresponding section 348 of BNSS, 2023 before the learned court which has been rejected by impugned order. He further submits that spirit of Section 311 of Cr.P.C, corresponding section 348 of BNSS, 2023 has not been interpreted in its right direction by the learned court by rejecting the said petition only on the ground of delay and closed the prosecution evidence and said application has been rejected. He further submits that spirit of that section is to find out the truth and to take just decision and if the case is made out for just decision the learned court was required to allow the said petition. He further submits that the petitioner herein has not tried to fill up any lacuna in view of the fact that the I.Os. are materials witness, the said petition has been filed which has been rejected by the learned court and to buttress this argument, he relied in the case of **"Natasha Singh Vs. Central Bureau of Investigation"** reported **in (2013) 5 SCC 741**. He refers to paras 15, 16 and 22 which reads as under:-

"15. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under [Section 311](#) Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under [Section 311](#) Cr.P.C. 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 great caution and circumspection. The very use of words such as 'any Court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide: [Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr.](#), AIR 1958 SC 376; [Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.](#), AIR 2004 SC 3114; [Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors.](#), AIR 2006 SC 1367; [Kalyani Baskar \(Mrs.\) v. M.S. Sampooram \(Mrs.\)](#), (2007) 2 SCC 258; [Vijay Kumar v. State of U.P. & Anr.](#), [Sudevanand v. State](#).)

22. In view of above, the appeal succeeds and is allowed. The judgment and order of the Trial Court, as well as of the High Court impugned before us, are set aside. The application under [Section 311](#) Cr.P.C. filed by the appellant is allowed. The parties are directed to appear before the learned Trial Court on the 17th of May, 2013, and the learned Trial Court is requested to fix a date on which the appellant shall produce the three witnesses, and the same may thereafter be examined expeditiously in accordance with law, and without causing any further delay. Needless to say that the prosecution will be entitled to cross examine them."

5. Relying on the above judgment, learned counsel for the petitioner submits that fair trial is the main object of criminal procedure, that has been held in the said case. He submits that if the case is made out of exercising power under section 311 of Cr.P.C, corresponding section 348 of BNSS, 2023

the learned court is required to exercise such power for just decision of the case. He further relied in the case of **"State Vs. N. Seenivasagan"** reported in **(2021) 14 SCC 1**. He refers to para 12 of the said judgment which is as under:-

"12. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under CrPC, summon any person as a witness, or examine 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 it to be essential to the just decision of the case". The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case."

6. Relying on the above judgment and he submits that the Hon'ble Supreme Court has held that true test is to find out essential to the just decision of the case.

7. Relying on above two judgments and referring the facts of the present case, he further submits that the aforesaid I.Os. are required to be examined as they are material witness in view of that the learned court has wrongly passed the said order. He further submits that within the stipulated time if the court allows, the three I.Os. will be examined. On this ground he submits that the impugned order may kindly be set aside.

8. On the other hand, learned counsel for the O.P. No.2 vehemently opposes the prayer and submits that the learned court has rightly passed the order. He further submits that at a belated stage the said petition has been filed and the learned court considering the spirit of Section 311 of Cr.P.C, corresponding section 348 of BNSS, 2023 has rightly passed the impugned order. According to him Section 311 Cr.P.C, corresponding section 348 of BNSS, 2023 cannot be invoked for filling up the lacuna and to buttress this

argument, he relied in the case of "***U.T. of Dadra & Nagar Haveli and Another Vs. Fatehsingh Mohansinh Chauhan***" reported in **(2006) 7 SCC 529**. He refers to paras 15, 16 and 17 of the said judgment.

9. Relying on the said judgment, he submits that once prosecution evidence is closed for filling up the lacuna the said petition cannot be allowed. He further submits that the learned court has passed the order and there is no illegality in the impugned order.

10. In view of above submissions of the learned counsel for the parties the Court has gone through the materials on record including the impugned order. Admittedly, chargesheet has been submitted against the accused persons. Trial has proceeded and the witnesses on behalf of prosecution has been closed on 04.05.2022 and thereafter petition has been filed for summoning the aforesaid three I.Os as P.Ws which has been rejected by the learned court.

11. The scope and object of Section 311 of Cr.P.C, corresponding section 348 of BNSS, 2023 is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. This power is required to be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. There is no doubt that an application under section 311 Cr.P.C, corresponding section 348 of BNSS, 2023 must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to

change the nature of the case. That power can be utilized to find out germane to the issue involved. However, if the case is made out, to summon any accused and the Court comes to the conclusion that it is necessary to find out just reason of the case that can be allowed subject to rebuttal. The said power can be exercised at any stage of the proceeding and do not limit the discretion of the Court in any way and further it is expected that Trial Court of a sessions case or any court should proceed with reasonable expedition and pendency of such a matter for years together is not desirable but then the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. The age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness.

12. If the I.Os have been sought to be called by way of issuing the summon, there is no doubt that I.Os. are material witness and for just decision the I.Os are required to be examined, has been held in the aforesaid two judgements in the case of "**Natasha Singh**" (*supra*) and *N. Seenivasagan (Supra)* relied by the learned counsel for the petitioner.

13. So far the judgment relied by Mr. Sinha, learned counsel for the O.P. No.2 in the case of **Fatehsingh Mohansinh Chauhan (supra)** is concerned, there is no doubt that for filling up lacuna and to alter the nature of the case that exercise cannot be allowed. In that case the witnesses have already been examined and the Court has found that for filling up the lacuna the said petition has been filed in that view of the matter the said order has been passed.

14. What has been discussed hereinabove, the three of the witnesses are the material witnesses who have not been examined at any

point of time in the proceeding in that view of the matter the judgment relied by the learned counsel for the O.P. No.2 is not helping the O.P. No.2.

15. In view of above facts, reasons and analysis and considering that the I.Os are material witnesses for just decision, the impugned order is not sustainable in the eye of law. Accordingly, the impugned order dated 24.06.0222 passed by the learned SDJM-cum-Special Magistrate, C.B.I, Dhanbad in R.C-06(A)/2001-D is set aside. The learned court shall summon the aforesaid three I.Os whose name has been noted hereinabove and give opportunity of examining them with right of rebuttal to the accused persons and this exercise must be completed within six weeks.

16. The learned court will not provide adjournment for examining three witnesses unless a cogent reason is brought in the knowledge of the court.

17. This petition is allowed and disposed of in above terms.

18. Let a copy of this order be communicated to the concerned court through FAX at the cost of the petitioner.

Dt.16.09.2025

Satyarthi/A.F.R.

(Sanjay Kumar Dwivedi, J.)