

(2025) 12 DEL CK 0021

Delhi HC

Case No: Criminal Miscellaneous Petition No.1286 Of 2025 & Criminal Miscellaneous Application No. 5763 Of 2025

Shelley Marwah

APPELLANT

Vs

State Govt. Of Nct Of Delhi And
Anr.

RESPONDENT

Date of Decision: Dec. 17, 2025

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023- Section 528
- Code of Criminal Procedure, 1973- Section 311, 313, 482
- Negotiable Instruments Act, 1881- Section 138

Hon'ble Judges: Ravinder Dudeja, J

Bench: Single Bench

Advocate: Atul Sahi, Yudhvir Singh Chauhan, Raghav Sharma

Final Decision: Dismissed

Judgement

Ravinder Dudeja, J

1. This petition has been filed under Section 528 Bhartiya Nagrik Suraksha Sanhita, 2023 [BNSS](Section 482 CrPC), seeking quashing of the order dated 07.02.2025 [impugned order], passed by the Court of Learned JMFC, NI Act-02, (Cental), Tis Hazari Courts, Delhi [trial court], whereby the application under Section 311 Code of Criminal Procedure [Code] filed by the Petitioner, for summoning the record of Complaint Case bearing No.13981/2017 titled **Ghanshyam Dass v. Rajesh Marwah** was dismissed.

2. The brief facts are that the Complainant/Respondent No.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 [NI Act] alleging that in October 2017 he advanced a sum of Rs.7,00,000/- (Rupees Seven Lakh Only) to the Petitioner, who in discharge of liability issued a cheque bearing no. 288933 dated 22.11.2017 drawn on ICICI Bank. The cheque was dishonoured with remarks Funds

Insufficient. Despite legal notice, payment was not made, leading to filing of Complaint Case No.134/2018.

3. During trial, the petitioner sought to summon the record of another case Complaint Case bearing No. 13981/2017 (Ghanshyam Dass v. Rajesh Marwah) where Respondent No.2 had appeared as attorney and allegedly admitted receipt of payments from the petitioners family. The application was moved by the Petitioner under Section 311 CrPC before the trial court, but the same was dismissed vide the impugned order dated 07.02.2025.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. Learned counsel for the petitioner submits that complainant Upender Gupta was the power of attorney holder in all the other cases filed against him and his wife and one such case being that of **Ghanshyam Dass Vs. Rajesh Marwah** bearing CC No. 13981/2017. The cross examination of the accused therein i.e. Rajesh Marwah was conducted under the supervision and instructions of complainant Upender Gupta and therein it was categorically put to witness Rajesh Marwah that the money paid/deposited by him in the account of Upender Gupta was not towards the alleged debt of Ghanshyam Dass but was towards some other debt of Upender Gupta.

5. It has been submitted that due to inadvertence, the said testimony was not brought on record, but the learned trial court, without applying its mind, dismissed the application in a complete arbitrary and pre-conceived manner. The grant of one opportunity would not have caused any prejudice to the complainant, more particularly, when the specific and limited prayer was made in the application.

6. It is argued that the matter is at the stage of final arguments, which are yet not commenced. The benevolent provisions of Section 311 Cr. PC empower the court to allow the application at the stage of the trial and just because the trial is at the fag-end the same would not operate as a bar for allowing the application under Section 311 Cr.PC. Reliance has been placed on P. Sanjeeva Rao Vs. State of Andhra Pradesh (2012) 7 SCC 56, Natash Singh Vs. Central Bureau of Investigation (State) (2013) 5 SCC 741, Godrej Pacific Tech Ltd. Vs. Computer joint India Ltd (2008) 3 JCC 2010, Nandkumar Rajkumar Harane Vs. Vishwas Vilasrao Kshirsagar & Anr, 2012CRI.LJ 542

SUBMISSIONS ON BEHALF OF THE RESPONDENT

7. Per contra, learned counsel for Respondent No.2 supported the impugned order passed by the learned trial court arguing that the trial is at the stage of final arguments and the petitioner is only attempting to delay the proceedings and therefore, the petition is liable to be dismissed. It was further argued that as per order dated 07.02.2025, it has been stated that Mr. Upender Gupta was never examined in CC no. 13981/2017 and it has been falsely stated in the application that Mr. Upender Gupta has deposed that he has received any payments from the family

of the accused. It is further argued that Para 3,5 and 7 of the application of the accused is contradictory to the defence before the Ld. Trial court.

ANALYSIS & CONCLUSION:

8. I have considered the submissions made by the learned counsels and have carefully perused the material placed on record. Section 313 CrPC is a salutary provision which empowers the Court to 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, if his evidence appears to be essential to the just decision of the case. It is aimed at empowering the court to find out the truth and to render a just decision. Such power is discretionary and is to be exercised only for strong and valid reasons and with caution and circumspection.

9. This Section confers a wide discretion on the Court to act as the exigencies of justice require. The discretion conferred to the Court has to be exercised judicially. The Apex Court in its judgments in Vijay Kumar Vs. State of U.P. (2011) 8 SCC 136, State (NCT of Delhi Vs. Shiv Kumar Yadav (2016) 2 SCC 402 and Ratanlal Vs. Prahlad Jat (2017) 9 SCC 340, has held that the recall of witness is not a matter of course and power under Section 311 of the Code has to be exercised judiciously, with caution and circumspection and not arbitrarily or capriciously. Such discretionary power has to be exercised on the basis of facts and circumstances of each case and has to be balanced carefully with considerations. In Satbir Singh v. State of Haryana, 2023 SCC OnLine SC 1086, the Supreme Court adverted to a few decisions of recent vintage. The relevant paragraphs of the judgment are extracted below:-

9. Section 311 of the Criminal Procedure Code, 1973 (hereinafter referred to as the CrPC) has engaged this Court's attention before. We will advert to a few decisions of recent vintage. While overturning an order of the High Court allowing an application for recall of a witness, which was rejected by the trial Court, this Court held as under, in Ratanlal v. Prahlad Jat, (2017) 9 SCC 340:

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.

18. In Vijay Kumar v. State of U.P. [Vijay Kumar v. State of U.P., (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240], this Court while explaining scope and ambit of Section 311 has held as under : (SCC p. 141, para 17)

17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of [CrPC] and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously.

19. In Zahira Habibullah Sheikh (5) v. State of Gujarat [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8], this Court has considered the concept underlying under Section 311 as under : (SCC p. 392, para 27)

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.

20. In State (NCT of Delhi) v. Shiv Kumar Yadav [State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402 : (2016) 1 SCC (Cri) 510], it was held thus : (SCC pp. 404g-405a)

Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary for ensuring fair trial is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be

entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined.

21. The delay in filing the application is one of the important factors which has to be explained in the application. In **Umar Mohammad v. State of Rajasthan** [**Umar Mohammad v. State of Rajasthan**, (2007) 14 SCC 711 : (2009) 3 SCC (Cri) 244], this Court has held as under : (SCC p. 719, para 38)

38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where *stricto sensu* the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed.

10. In **Manju Devi v. State of Rajasthan**, (2019) 6 SCC 203, this Court emphasized that a discretionary power like Section 311, CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone. A note of caution was sounded in **Swapan Kumar Chatterjee v. Central Bureau of Investigation**, (2019) 14 SCC 328 as under:

10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or

(iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.

11. Adverting back to the facts of the present case, the petitioner has sought to summon and examine the records of another case altogether (**Ghanshyam Dass Vs. Rajesh Marwah**). The trial court not only found that the submissions made by the counsel for the petitioner were not reflective from the submissions made in the application but also that petitioner had ample opportunity to cross examine Upender Gupta to bring any evidence in favour of the petitioner. The trial court took note that the case was of the year 2017 and was in defence evidence since 2019 and therefore did not deem it appropriate to allow the application.

12. The petitioner had ample opportunity to summon the record. It is not explained why if such record was relevant, was not summoned and placed on record at the earliest opportunity. It is possible that the application may have been filed at this belated stage with a view to further delay the adjudication of the case. I therefore find no perversity in the reasoning of the trial court

13. In these circumstances, the Court is of the opinion that the provisions of Section 311 Cr. PC cannot be allowed to be misused by the petitioner to derail the proceedings or to cause inconvenience to the other party as the same would amount to miscarriage of justice and cause prejudice to respondent no.2. The petition is devoid of any merit.

14. Accordingly, the petition is dismissed along with pending application(s), if any.