

**(2016) 09 UK CK 0028**

**Uttarakhand High Court**

**Case No:** Criminal Misc. Application No. 1129 of 2016

Veer Singh and another -  
Applicants @HASH State of  
Uttarakhand and another

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Sept. 7, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 311

**Citation:** (2016) 97 ACrC 249 : (2017) 169 AIC 382

**Hon'ble Judges:** Servesh Kumar Gupta, J.

**Bench:** Single Bench

**Advocate:** Mr. Karan Anand, Advocate, for the Applicants; Mr. V.K. Jemini, D.A.G, for the State

**Final Decision:** Allowed

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### **Judgement**

**Servesh Kumar Gupta, J.** - This C482 petition has been filed challenging the order of learned Trial Court passed on 26.08.2016, whereby the application moved by the prosecution under Section 311 Cr.P.C. was accepted and the permission to summon the witness Dr. Jitendra Jakhad was accorded again.

2. Before passing any order, it would be relevant to have note of the facts that Sessions Trial commenced in the Court below in the year 2009. It is pending adjudication for the last 7-8 years since then. The prosecution witnesses had been examined. Statement of accused was recorded under Section 313 Cr.P.C. The arguments have been heard on 11.08.2016 and the case was fixed for delivery of the judgment on 26.08.2016. On such date, before permitting the Court to pronounce the judgment, the prosecutor moved an application invoking the powers of the Court under Section 311 Cr.P.C. for issuing the summons again to the doctor, who had conducted the autopsy of the deceased.

3. It is not the case that such opportunity was not availed by the prosecution ever herein before, conversely such opportunity was availed many a times, but the doctor could not be produced. The prosecution never asked to take coercive measures in order to ensure the presence of that doctor in the Court. Such application under Section 311 Cr.P.C. was allowed by the Court below.

4. Feeling aggrieved the applicants/accused persons have come up before this Court.

5. Undoubtedly, the Court has ample and inherent powers to summon any witness if it is inevitable for the adjudication of the matter. But at the same time, the prosecution cannot enjoy enormous liberty to hamper the course of delivery of the judgment in such a manner, as has been done in this case.

6. I feel that when after hearing the arguments, the case has been fixed for delivery of judgment, both parties became functus officio and they did not have any access to interfere with the process of the court to deliver the judgment.

7. Nothing remains to be heard at that moment, at least at the initiation of either of the parties with the exception that if the Court itself desires or feels it necessary to invoke such power, then there is no impediment in exercising such power even at that stage.

8. That apart, although to get the post mortem proved is also desirable on the part of the prosecution, but failure whereof by itself cannot wipe out the whole evidence otherwise produced by the prosecution.

9. The Hon"ble Apex Court in the case of "**Main Pal and another v. State of Haryana and others**", reported in **2004 SCC (Cri) 1882**, has held that "opinionative evidence of doctor though has value but cannot wipe out the effect of eyewitnesses" evidence. Opinion of the doctor cannot have any binding force and cannot be said to be the last word on what he deposes or meant for implicit acceptance."

I feel that this petition has force and I allow it and set aside the impugned order dated 26.08.2016, passed by learned Additional Sessions Judge, Vikas Nagar, Dehradun, who will again reserve the file for judgment and shall deliver the verdict at the earliest.

10. Certified copy of this judgment shall be issued today itself to learned counsel for the applicants on his expenses.