



2025:DHC:10809



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: December 03, 2025*

+ **CRL.M.C. 5574/2025**

GURJEET SINGHPetitioner

Through: Mr. Sandeep Dhaiya, Mr.
Anand Seth, Mr.
Amandeep Kaur, Mr.
Mohit Jhakar, Ms.
Priyanka Rani and Mr.
Ankur Jhakar, Advs.

versus

RAHUL VIJ & ANR.Respondents

Through: Ms. Sumati Sharma, Adv.
for R-1 with R-1 in person.
Mr. Raj Kumar, APP for
the State with Insp.
Radhey Shayam, SHO
Paschim Vihar East.

**CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN**

AMIT MAHAJAN, J. (Oral)

1. By the present petition, the petitioner seeks following prayers :

- A. *Allow the present application and set aside the order dated 20/01/2025 passed by the court of Ld. Aneez Bishnoi, JMFC, West District, Tis Hazari Court in Cr. Case 67894/2016; and/or*
- B. *And pass any such other and further orders as may be deemed just and proper in the interest of justice.*



2. The petitioner is essentially aggrieved that the Investigating Officer (**IO**) of the case, SI Sumit Kumar, is dropped from the list of witnesses.

3. Briefly stated, it is alleged that on 22.07.2012, Respondent No.2, while driving his car negligently and at a high speed, hit the complainant and his friend who were riding a bike as a consequence of which the complainant and his friend sustained injuries. It is alleged that after the incident, Respondent No.2 looked back from his car and thereafter fled from the spot.

4. The record indicates that the matter was listed for recording of prosecution evidence from time to time. The evidence was being recorded since the year 2019.

5. The record also indicates that summons to IO/SI Sumit Kumar were issued for the first time in the month of May, 2019 and thereafter, despite repeated summons including the summons through DCP, the trial court failed to secure his presence.

6. It appears that the learned Trial Court finally, on being frustrated with the failure of the prosecution, dropped SI Sumit Kumar from the list of witnesses by order dated 19.01.2024. The matter was then adjourned to 24.02.2024 and thereafter to 12.04.2024, on which date, adjournment was taken by the State stating that they are in a process of challenging the order dated 19.01.2024.

7. The matter was then adjourned to 12.07.2024, on which date, no proceedings took place since the lawyers were abstaining from work.

8. On 23.08.2024, the matter was adjourned since the learned



Presiding Officer was not available.

9. On 21.10.2024, the matter was adjourned to 20.01.2025, on which date, the application filed by the complainant / petitioner under Section 311 of the Code of Criminal Procedure, 1973 (**CrPC**), was dismissed, noting that the order dated 19.01.2024 was a well-reasoned order.

10. The petitioner, then challenged the said order by filing a revision petition before the learned Court of Sessions, which was dismissed as withdrawn and the present petition was thereafter filed.

11. In the meantime, the State also appears to have preferred an application under Section 311 of the CrPC, which was dismissed by a subsequent order dated 17.07.2025.

12. An explanation was called from the State in regard to the conduct of the witness, SI Sumit Kumar, not appearing in Court despite repeated summons.

13. An affidavit of the concerned DCP has been handed over by the learned Additional Public Prosecutor (**APP**) for the State. The same is taken on record.

14. The affidavit points out different dates on which the summons were issued to witness, SI Sumit Kumar, and the reasons why the witness could not appear.

15. In the opinion of this Court, the explanation is not satisfactory. The witness being busy in other official duties cannot be a reason for evading the summons issued by court for more than 4 years.

16. Undisputedly, if the Police has a duty to maintain law and



order, they have an equal duty to appear in Court as and when directed especially when the investigations are being conducted by the said Officer. No investigation is complete unless the same is taken to a logical conclusion by way of proper prosecution.

17. The learned APP for the State, on instructions, states that if one last opportunity is granted, the witness - SI Sumit Kumar, will appear before the Court and no further adjournment will be taken in that regard.

18. The learned counsel for the accused / Respondent No. 1 submits that the trial is at its fag end and the arguments have already been heard and the matter is now pending for judgment.

19. She submits that at such belated stage, the prayer for examination of witness ought not to be allowed.

20. It is trite law that the Court can summon a person at any stage of the trial if the evidence of such a person is essential for the just decision of the case. The Hon'ble Apex Court in the case of *Natasha Singh v. CBI* : (2013) 5 SCC 741 while observing that the power to summon or recall witnesses can be exercised at any stage of trial observed as reproduced hereunder:

“8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of



the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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 CrPC 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 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 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.”



(emphasis supplied)

21. Similarly, the Hon'ble Apex Court in the case of ***Ratanlal v. Prahlad Jat and Others*** : (2017) 9 SCC 340 observed 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.”

(emphasis supplied)

22. The officer who conducted the investigation is undoubtedly an essential witness to depose in regard to the material collected during the investigation. It is not the case that the witness is not available to depose due to any terminal illness or death. Witness in this case merely absented citing engagement in other work.

23. As noted above, the record indicates that the witness, SI Sumit Kumar, was to be examined in the month of January, 2024, on which date, he was dropped on account of non-appearance.



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24. An application under Section 311 of the CrPC appears to have been immediately filed without much delay by the complainant / petitioner.

25. The application filed by the petitioner under Section 311 of the CrPC was taken up for the first time in the month of January, 2025. From the period January, 2024, when undisputedly the witness could have been examined, nothing much happened till January, 2025, when the application filed by the petitioner was taken up and dismissed.

26. Thus, between January, 2024 and January, 2025, the case had not proceeded and in the opinion of this Court, no prejudice would have been caused if the petitioner's application was allowed on the said date and the witness was summoned again.

27. In case the said witness was not appearing, it was also within the powers of the Court to pass an appropriate direction including issuing non-bailable warrants or directing the respondent authorities to take disciplinary action against the concerned Officer.

28. However, without taking such recourse, the witness, who undisputedly was responsible for filing the chargesheet and conducting the investigation and was an important witness, ought not to have been dropped from the list of witnesses because of his own conduct. There are ample powers available in CrPC to secure the presence of a witness, especially when the concerned witness is also the Investigating Officer.

29. In view of the above, present petition is allowed and the application filed by the petitioner under Section 311 of the CrPC



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is allowed. Consequently, the orders dated 19.01.2024 and 20.01.2025 are set aside.

30. The learned Trial Court is directed to fix a date for examination of SI Sumit Kumar and for that purpose, the present order be treated as summons for appearance of the witness - SI Sumit Kumar on 10.12.2025.

31. In case the witness - SI Sumit Kumar fails to appear, the learned Trial Court is at liberty to pass appropriate orders for securing his presence, not limited to issuing non-bailable warrants and further orders / directions.

32. The petitioner is at liberty to file an appropriate application in case the order is not complied with.

33. The present order be communicated to the concerned Trial Court for necessary compliance.

34. State is directed to communicate the present order to prosecution witness/SI Sumit Kumar for compliance.

AMIT MAHAJAN, J

DECEMBER 3, 2025

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