



2025:DHC:970



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

% **Reserved on : 18<sup>th</sup> December, 2024**  
**Pronounced on: 17<sup>th</sup> February, 2025**

+ CRL.M.C. 1356/2023 & CRL.M.A. 5201/2023

SHUBHAM YADAV

.....Petitioner

Through: Mr. Hitender Kapur and Mr. Yatin,  
Advocates

Versus

CENTRAL BUREAU INVESTIGATION .....Respondent

Through: Mr. Rajesh Kumar, SPP with Ms  
Mishika Pandita and Mr Mohd  
Changez Ali Khan, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

## **J U D G M E N T**

### **CHANDRA DHARI SINGH, J.**

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")], seeking setting aside of the order dated 27<sup>th</sup> January, 2023 (hereinafter "impugned order") passed by the learned Special Judge (PC Act), Rouse Avenue Courts, New Delhi (hereinafter "ASJ/Trial Court") in CC No. 105/2019 arising out of R.C. No. 16A/2017.

### **FACTUAL MATRIX**

2. On 7<sup>th</sup> April, 2017, the Deputy General Manager, Bank of Baroda, New Delhi, lodged a complaint before Superintendent of Police, Central



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Bureau of Investigation, Anti-Corruption Branch regarding financial irregularities at Bank of Baroda, Azadpur Branch, Delhi during the demonetization period. The complaint alleged that certain fraudulent transactions had taken place, involving the misuse of Specified Bank Notes i.e. demonetized Rs. 500 and Rs. 1000 notes.

3. Based on the bank's complaint, the respondent registered R.C. No. 16(A)/2017 on 7<sup>th</sup> April, 2017. During the investigation, the respondent examined bank records and statements of officials and customers, revealing that the petitioner, who was employed as a Single Window Operator – A (SWO-A) at Bank of Baroda, Azadpur Branch, Delhi was involved in falsifying cash deposits slips and altering transactions records. It was alleged that he replaced valid currency deposited by customers with demonetized notes, thereby enabling their unauthorized exchange in violation of RBI regulations.

4. Based on the findings of the investigation, the respondent filed a chargesheet against the petitioner for the offences punishable under Sections 409, 420, 468, 471 and 201 of the Indian Penal Code, 1860 (hereinafter "IPC") along with Section 13(2) read with Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter "PC Act").

5. The learned Trial Court took cognizance of the chargesheet and the case proceeded to trial pursuant to which the prosecution examined 23 witnesses in support of its case, and on 12<sup>th</sup> September, 2022, it closed its evidence.

6. On 10<sup>th</sup> November, 2022, the petitioner's statement under Section 313 of the CrPC was recorded, wherein he denied the allegations and



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responded to the evidence presented by the prosecution. Thereafter, the evidence was led by the accused/petitioner and the matter was listed for final arguments.

7. Thereafter, vide application dated 22<sup>nd</sup> December, 2022, the respondent sought permission to place on record a complete screenshot from the OHDTM menu of the Finacle System (used for processing and recording cash deposit transactions including details such as transaction amounts, timestamps and associated voucher numbers), which was allegedly omitted in the chargesheet. The respondent argued that the screenshot of the said OHDTM menu of the Finacle System, which was already placed on record earlier, was incomplete and that the missing portion contained crucial details, particularly a transaction number linking the petitioner to the offence.

8. In addition to introducing the complete screenshot, the respondent sought the recall and re-examination of four witnesses arguing that their testimonies were based on incomplete records and that the missing information was necessary for proper adjudication of the case.

9. The petitioner herein opposed the said application, arguing that the additional document constituted fresh evidence and could only be brought on record through further investigation under Section 173(8) of the CrPC. It was contented that the prosecution was attempting to fill lacunae in its case after realizing shortcomings in its evidence, which is impermissible in law.

10. The petitioner also objected to the recall of witnesses after the closure of prosecution evidence and after final arguments had



commenced, stating that it was highly prejudicial to his right to a fair trial as it placed him at a severe disadvantage.

11. Subsequently, the learned Trial Court allowed the prosecution's application vide the impugned order dated 27<sup>th</sup> January, 2023, holding that the screenshot was already a part of the record, though incomplete, and its completion did not amount to fresh evidence. The learned Court below further stated that the error in filing an incomplete document was inadvertent. Furthermore, the learned Trial Court permitted the recall of witnesses with the reasoning that their testimonies needed to be examined in light of the additional document and allowing their re-examination would ensure that the Court concerned had access to a complete factual record.

12. Aggrieved by the impugned order, the petitioner has preferred the present petition, seeking setting aside of the same.

### **PLEADINGS BEFORE THIS COURT**

13. The instant petition has been filed on behalf of the petitioner seeking setting aside of the order dated 27<sup>th</sup> January, 2023 based on the following grounds:

*"...c) Because Ld. Trial Court despite referring to judgment titled as Mir Mohd. Omar & Ors. v. State of West Bengal, AIR 1989 SC 1785, wherein Apex Court examined an issue that after the statement of the accused under Section 313 Cr.P.C. had been recorded, the prosecution had filed an application to further examine a witness and the High Court had allowed the same. This Apex Court then held, that once the accused has been examined under Section 313 Cr.P.C., in the event that liberty is given to the prosecution to recall a witness, the same may amount to filling up a lacuna existing*



*in the case of the prosecution and therefore, that such an order was uncalled for.*

*d) Because Ld. trial Court failed to appreciate that investigating officer cannot obtain fresh documents during the trial without recourse to section 173(8) of Code of Criminal Procedure and in the present case the documents which were sought to be placed on record have been obtained without seeking any permission of court under section 173(8) Cr.P.C.*

*e) Because Ld. Trial court wrongly held that any document can be placed on record by prosecution after closure of evidence under section 311 of Cr.P.C. It is submitted that provisions of section 311 Cr.P.C cannot be invoked by prosecution to place on record additional documents on record.*

*f) Because Ld. Trial Court has failed to appreciate that the statement of PW-10, PW-17, PW-20, PW- and PW-23 were recorded way back and it was within the knowledge of prosecution that screen shots relied by the prosecution are not supporting the prosecution story. The prosecution never sought any condonation for filling application and Ld. Trial court of its own wrongly presumed the reasons for delay without any pleadings in the application. It is pertinent to mention that prosecution has not assigned any reason for not placing on record additional documents during the course of prosecution evidence or at the time of filing chargesheet.”*

14. The petitioner has also filed the written submissions dated 12<sup>th</sup> September, 2023, relevant portion of which is hereunder:

*“6. That after conclusion of final argument the prosecution filed application under section 311 C.r.pc on 22.12.2022 for placing on record certain documents along with certificate under section 65-B of Evidence Act and for re-examination of some of the prosecution witnesses along with one new witness. The said application of the prosecution was allowed by the Ld. Trial Court.*

*7. That the finding of the Ld. Trial Court is perverse and*



*against the provision of law. It is pertinent to mention that no document can be placed on record by the prosecution u/s 311 Cr.pc, as the said provision is only to summon material witness or to examine person present in court.*

*8. That the Ld. trial Court failed to appreciate that investigating officer cannot obtain fresh documents during the trial without recourse to section 173(8) of Code of Criminal Procedure and in the present case the documents which were sought to be placed on record have been obtained without seeking any permission of court under section 173(8) Crpc.*

*9. That apart from 173(8) Crpc the documents can be placed on record through a witness u/s 91 Crpc, whereby the witness is directed to produce the documents or other thing necessary or desirable for the purpose of any investigation, inquiry, trial or other proceedings. However admittedly in the present case sec 91 has not been invoked therefore at the stage of conclusion of trial the prosecution cannot place on record any document against the provision of Code Of Criminal Procedure.*

*10. That it is well settled principle of law that after hearing final arguments the prosecution cannot be permitted to fill lacuna in its case causing grave prejudice to accused.”*

15. Rebutting the instant petition, the respondent has filed its reply, and the relevant extracts of the same are as follows:

*“(d-e) That the averments made in sub-paras (d & e) of grounds of the petition are vehemently denied being devoid of merit. It is submitted that the contention of the petitioner that the provisions of Cr.PC do not provide for filing of the additional documents after commencement of trial is not convincing for the reason that the documents sought to be placed on record is not any new document but the same is only a complete copy of screenshots which is already on record. It is submitted that the real purpose of criminal trial is to unravel the truth and ascertainment of real facts. It is relevant to mention here that Section 311 Cr.PC empowers*



*the court to allow not only the additional evidence at any stage of trial but also allow any additional document in evidence at any stage of proceedings provided the same is considered essential for just decision of case and does not lead to any prejudice to the accused.*

*f) That the averments made in sub-para (1) of grounds of the petition are vehemently denied being devoid of merits. It is submitted that aforesaid screenshots are essential for the just decision of the case and to render complete justice, therefore the Ld. Trial Court allowed the application of prosecution. Placing on record aforesaid documents does not amount to filling of lacuna by any means & further no prejudice has been caused to the petitioner.*

*(g-i) That in reply to averments made in sub-para (g to i) of grounds of the petition, it is submitted that there is no infirmity in the impugned order and the same is in consonance with the law laid down by the Hon'ble Supreme Court in recent judgment titled Varsha Garg V/s State of M.P & Ors. Citation 2022 Live Law (SC) 662 dated 08.08.2022. It is held that, "The resultant filling of loopholes on account of allowing the application is merely a subsidiary factors & the courts determination of application should only be based on the test of essentiality of evidence. It is the duty of the criminal court to allow the prosecution to correct an error in the interest of justice".*

## **SUBMISSIONS**

***(on behalf of the petitioner)***

16. Learned counsel appearing on behalf of the petitioner submitted that the respondent cannot be permitted to fill lacunae in its case after the conclusion of final arguments as the same causes grave prejudice to the accused. It is also submitted that the learned Trial Court failed to appreciate that once the prosecution has closed its evidence, it cannot seek to introduce fresh evidence at a belated stage under the garb of



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rectification, and thus, the impugned order is bad in law and liable to be set aside.

17. It is submitted that the learned Trial Court disregarded the legal precedents and submissions made by the petitioner, which clearly demonstrated that allowing the prosecution to place additional documents on record at this stage is impermissible in law.

18. It is submitted that the learned Trial Court misinterpreted the ruling in *Mir Mohd. Omar & Ors. v. State of West Bengal*<sup>1</sup> which holds that once the accused has been examined under Section 313 of the CrPC, in such event permitting the prosecution to recall a witness for additional evidence amounts to filling up a lacuna, which is not permissible in law. It is also submitted that despite referring to this judgment in the impugned order, the learned Trial Court wrongly allowed the respondent's application, thereby defeating the settled principles of law.

19. It is submitted that the investigating agency cannot obtain fresh documents during the trial without obtaining permission under Section 173(8) of the CrPC. In the present case, the prosecution sought to introduce additional documents that were not part of the original chargesheet and had not been placed on record during the course of prosecution evidence. It is further submitted that since the prosecution failed to seek the requisite permission under Section 173(8) of the CrPC, the introduction of these documents is not permissible under the law.

20. It is submitted that the learned Trial Court erroneously held that additional documents can be placed on record under Section 311 of the CrPC/Section 348 of the BNSS. It is also submitted that the provisions of

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<sup>1</sup> AIR 1989 SC 1785



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Section 311 of the CrPC/Section 348 of the BNSS are confined to summoning or recalling witnesses and do not extend to allowing the prosecution to introduce new documentary evidence after the closure of its case. It is further submitted that the learned Trial Court's reliance on Section 311 of the CrPC to admit fresh documents is legally flawed and unsustainable.

21. It is submitted that the prosecution was fully aware that the screenshots relied upon did not support its case since the time of recording of statements of relevant witnesses. It is also submitted that despite this knowledge, the prosecution did not take any steps to introduce additional documents during its evidence stage or at the time of filing the chargesheet. It is further submitted that the prosecution also failed to offer any justification for the delay in filing its application and the learned Trial Court erred in presuming the reasons for this delay without any pleadings or explanations being provided by the prosecution.

22. It is submitted that the impugned order suffers from serious legal infirmities and has resulted in a gross miscarriage of justice by permitting the prosecution to introduce new evidence at the final stage of trial, and thus, the learned Trial Court has allowed the prosecution an undue advantage, thereby prejudicing petitioner's defence.

23. It is submitted that in *Swapan Kumar Chatterjee v. CBI*<sup>2</sup>, the Hon'ble Supreme Court held that allowing additional evidence at a belated stage amounts to unfairly aiding the prosecution. It is also submitted that the said judicial precedent clearly prohibits such attempts by the respondent to bolster its case at a later stage.

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<sup>2</sup> (2019) 14 SCC 328



24. It is submitted that in *Hasanbhai Valibhai Qureshi v. State of Gujarat*<sup>3</sup>, the Hon'ble Supreme Court clarified that any defective investigation discovered during trial must be cured only through proper further investigation under Section 173(8) of the CrPC and not through ad-hoc measures during the trial. It is also submitted that the failure of the prosecution to adhere to this legal requirement renders the impugned order unsustainable.

25. In view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

*(on behalf of the respondent)*

26. *Per Contra*, the learned SPP appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

27. It is submitted that the document in question, i.e., the screenshot of the OHDTM menu from the Finacle System was already a part of the case record, however, the same was filed in an incomplete manner due to inadvertence. It is also submitted that placing on record a complete copy of the said screenshot does not amount to fresh investigation but merely a rectification of an existing document.

28. It is submitted that the learned Trial Court correctly exercised its discretion under Section 311 of the CrPC to allow the prosecution to place the complete document on record, as it was essential for the just decision of the case.

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<sup>3</sup> (2004) 5 SCC 347



29. It is submitted that the prosecution is not attempting to fill any lacuna but only ensuring that the record is complete to reflect the true facts of the case. It is also submitted that the complete document is critical in establishing the link between fraudulent transactions and the accused's role.

30. It is submitted that there is no requirement under Section 173(8) of the CrPC for prior permission from the Magistrate to conduct further investigation, hence, the reliance placed by the petitioner on Section 173(8) of the CrPC is misplaced. It is also submitted that the police have the statutory authority to continue the investigation and collect further evidence, if necessary, and thus, the impugned order has been passed correctly.

31. It is submitted that the accused/petitioner will be given opportunity to cross-examine the recalled witnesses and challenge the additional document and in light of the said opportunity, no violation of the accused's right to a fair trial has occurred.

32. It is submitted that the Hon'ble Supreme Court has time and again held that procedural irregularities which do not cause prejudice to the accused should not be allowed to vitiate trial proceedings.

33. In view of the foregoing submissions, it is prayed that the present petition may be dismissed.

### **ANALYSIS AND FINDINGS**

34. Heard the counsel for the parties and perused the material available on record.

35. It is the case of the petitioner that the learned Trial Court erred in allowing the prosecution to introduce additional documentary evidence



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after conclusion of final arguments, thereby unfairly filling lacunae in its case. It is argued that Section 311 of the CrPC does not permit the introduction of fresh documentary evidence, and that the prosecution failed to follow procedure under Section 173(8) of the CrPC. It is further contended that the prosecution was aware of the missing document earlier but provided no justification for its delayed submission. The petitioner also asserts that new evidence cannot be introduced post-trial without due process. Accordingly, the impugned order is legally unsustainable and may be set aside.

36. In rebuttal, the contention of the respondent is that the prosecution acted lawfully and that the learned Trial Court correctly exercised discretion in allowing the introduction of a complete version of an already filed document, which does not amount to fresh investigation. It is argued that Section 311 of the CrPC permits the said rectification and that Section 173(8) of the CrPC does not require prior permission for further investigation. The respondent contends that no prejudice has been caused to the accused, as he has or will have the opportunity to cross-examine the recalled witnesses. It is further submitted that procedural irregularities should not vitiate trial proceedings and therefore, the instant petition may be dismissed.

37. Having considered the submissions advanced by both the parties, the dispute before this Court revolves around the prosecution's introduction of additional documentary evidence after the conclusion of final arguments and the procedural correctness of the learned Trial Court in allowing the same.



38. In light of the above contentions, the issues that arise for adjudication by this Court are *whether the introduction of the complete screenshot of the OHDTM menu constitutes fresh evidence requiring compliance with Section 173(8) CrPC, or whether it is a mere rectification of an incomplete document?* The next question that arises is *whether the learned Trial Court erred in allowing the prosecution to introduce additional documentary evidence after the conclusion of final arguments, thereby amounting to violation of the petitioner's right to fair trial?*

39. Adverting to the first issue, the petitioner has argued that the missing portion of the screenshot contains crucial transaction details that were not included in the original chargesheet, thereby, fundamentally altering the prosecution's case by introducing new material evidence post-trial closure. In contrast, the respondent contends that the document was already part of the record, however, in an incomplete form, and its completion does not amount to introduction of any fresh evidence, rather it serves as a clarification which is necessary for the proper adjudication of the dispute.

40. At the heart of this issue lies the distinction between 'further investigation' under Section 173(8) of the CrPC, which requires a supplementary chargesheet and 'permissible rectification' of an evidentiary oversight, and the same does not attract the procedural safeguards of further investigation. Therefore, this Court must determine whether the additional details within the complete screenshot of the OHDTM menu from the Finacle System, substantively impact the prosecution's case or the petitioner's defence, thereby, requiring



compliance with Section 173(8) of the CrPC or whether its introduction falls within the permissible domain of clarification of evidence already on record.

41. At this juncture, it is imperative to peruse the impugned order passed by the learned Trial Court. The relevant extracts of the same are reproduced herein below:

*“...10. As is evident from the language employed in the provision, the discretion given by the first part is very wide and its very width requires a corresponding caution on the part of the court. But the second part does not allow any discretion; it binds the court to examine fresh evidence and the only condition prescribed is that this evidence must be essential to the just decision of the case. Whether the new-evidence is essential or not must of course depend on the facts of each case and has to be determined by the presiding Judge. Reliance placed on Ram Jeet and ors vs. State of UP AIR 1958 All 439.*

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*13. Vide instant application, the permission has been sought for placing on record the photocopy of the screen shots (certified by the bank) in respect of alleged 8 transactions bearing transaction ID no.001720018, 001574609, 001176711, 001523106, 001607400, 001716231, 001578946 and 001642429 taken from the OHDTM Menu of the FINACLE System. As per CBI, the screen shots of aforementioned 8 transactions earlier placed on record with the chargesheet, which are now part of exhibit Ex. PW17/A-1 (colly), are incomplete documents as the same do not reflect the transaction number appearing on the corresponding bank vouchers allegedly forged by the accused. It is submitted by Ld. PP that the transaction number is usually mentioned on the top right corner of the window of OHDTM Menu whereas, the screen shots which are already placed on record were taken by scrolling down*



*the window of OHDTM Menu for showing only the bottom side bearing the details of the bank officer who made the entries in respect of said transactions while the topmost portion reflecting the transaction number of the entry remained cut out. Therefore, the screen shots available on judicial record are not complete as they do not depict the transaction number on the top right corner of OHDTM Menu corresponding with the transaction number mentioned on the alleged forged vouchers. For said reason, during their cross-examination PW-10, PW- 17, PW-20 and PW-23 were not able to relate the forged vouchers with the alleged transactions in the OHDTM Menu and in the light of said circumstances of the case, the complete screen shots of OHDTM Menu reflecting the transaction number of the relevant entry, are necessary to be placed on record and the related witnesses are also required to be recalled for their re-examination in the light of said complete screen shots.”*

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*18. Here, I would refer to the judgement of Hon'ble Apex in **Rajendra Prasad v. Narcotic Cell through its Officer-in-Charge** (supra), wherein the Hon'ble Apex Court observed that “*Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of It should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting. errors. 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. After all. function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.*”*

*19. Even in the instant case, it was a non-deliberate fault on the part of IO that he placed incomplete copies of screenshots of the chargesheet and an oversight in the*



*management of the prosecution led to delay in moving the instant application for placing the complete documents on record. The flaw in the documents came into the notice of prosecution at the time of examination of PW17, who was examined in way back in 2019 but, the steps to rectify said defect were taken after considerable delay in 2023. However, we cannot lose sight of the fact that after the outbreak of pandemic in March, 2020, the courts remained closed for considerable time and after transfer of my predecessor in Nov, 2021, this court also remained vacant till end of April,2022 and during said period the earlier prosecutor also got transferred to some other court. Hence, all said factors also became the reason for the delay in moving the application.*

*20. The contention of the defence counsel that the provisions of Cr.P.C do not provide for filing of the additional documents after commencement of trial is not convincing for the reason that the documents sought to be placed on record are not any new documents but are complete copies of incomplete screenshots which are already on record. Even otherwise, the rules of procedure are designed as means of fair and just trial because the real purpose of criminal trial is to unravel the truth and ascertainment of real facts. In my considered view, Section 311 Cr.P.C which is analogous to Section 540 of old Code of Criminal Procedure empowers the court to allow not only the additional evidence at any stage of trial but to also allow any additional document in evidence at any stage of proceedings provided the same is considered essential for just decision of case and does to lead to any prejudice to the accused. Reliance in this regard is placed on case titled "**Chandu Veeraiah And Ors. vs State Of Andhra Pradesh**, (DOD 16 November, 1959) AIR 1960 AP 329, 1960 Cri LJ 791. Though the Prosecution has committed mistake by filing incomplete documents on record and by not taking steps to rectify the defect at the appropriate stage but, Section 311 CrPC gives wide powers to court to act as the exigency of the case would require provided no prejudice is caused to the accused.*



21. *The witnesses cited for re-examination in the application are pertaining to the entries made in OHDTM menu of the bank computer and since earlier they were shown only the incomplete copy of the screenshots of relevant transactions, their re-examination would also become necessary for examining them in respect of complete screenshots so as to given them the opportunity to clarify the dispute pertaining to transaction number of the alleged entries. Further, as observed in above referred judgment in **Mohanlal Shamji Soni v. Union of India & Anr., AIR 1991 SC 1346**, courts should avoid rendering judgments on an inchoate, inconclusive and speculative presentation of facts, as the same would otherwise defeat the ends of justice. Therefore, for bringing clarity on record, the complete screenshots of the alleged transactions as well re-examination of aforementioned witnesses is necessary for just decision of the case. No prejudice will be caused to accused as he would get the opportunity to cross-examine said witnesses on newly placed documents.*

22. *In the light of aforementioned discussion, am inclined to allow the, application. Accordingly, the copies of complete screenshots alongwith the certificate of Section 65B of Indian Evidence Act are taken on record. All the four witnesses mentioned in the application are allowed to be recalled for their re-examination by CBI subject to availability of said witnesses and subject to cost of Rs.3000/- to be deposited with DSLSA. Since, the complete screen shots have been filed alongwith the certificate of Section 65B of Indian Evidence Act of Bank Manager, the prosecution is also allowed to examine said person as an additional witness to prove said documents in accordance with law... ”*

42. Upon perusal of the aforesaid extracts of the impugned order, it is made out that the learned Trial Court explicitly observed that the document was already a part of the record, and its omission was a procedural oversight rather than a suppression of evidence. The learned Court below observed that the prosecution is not attempting to introduce



a new piece of evidence or alter the nature of the case, rather ensuring that the full details of an already submitted document are placed for proper adjudication. Moreover, the document does not introduce any new facts or allegations against the accused but merely completes the evidentiary chain that was already relied upon by the prosecution. The learned Trial Court, in allowing the application, emphasized the need for comprehensive evidentiary record, holding that an omission of this nature should not result in an incomplete appreciation of facts by the Court.

43. It is observed by this Court that the document in question is a screenshot of the OHDTM menu from the Finacle System which records transaction details related to the case. This screenshot was originally filed as a part of the chargesheet, however, in an incomplete form, lacking the transaction number that links the petitioner to the alleged fraudulent activity.

44. Having established that the document was already part of the record in an incomplete form, the question that arises, at this juncture, is whether its completion amounts to fresh evidence or is merely a rectification of an inadvertent omission?

45. The distinction between fresh evidence and rectification is well-recognized in legal principles governing criminal trials. Fresh evidence, generally, refers to new material that was not a part of the original investigation and alters the nature of the prosecution's case by introducing new facts or allegations against the accused. Such evidence typically emerges from further investigation, requiring compliance with Section 173(8) of the CrPC, as it is an addition to the earlier completed investigation.



46. Rectification, on the other hand, involves the correction of an omission, mistake or incomplete filing of evidence that was already collected during the investigation. A rectification does not introduce new elements into the case but merely ensures that the existing evidence is presented in its complete and accurate form.

47. In the present case, it is observed by this Court that the complete screenshot does not introduce a new allegation but only supplements an already filed document, thereby, ensuring clarity in the evidentiary record.

48. Applying this distinction, this Court finds that the introduction of the complete screenshot does not constitute fresh evidence. The document in question was already a part of record in an incomplete form, and its completion does not introduce any new allegation, new findings, or alter the prosecution's case in any material manner.

49. At this juncture, this Court finds it apposite to refer to relevant judicial precedents that have consistently recognized the broad discretionary powers conferred upon courts under Section 311 of the CrPC.

50. In *Rajaram Prasad Yadav v. State of Bihar*<sup>4</sup>, the Hon'ble Supreme Court listed the basic principles for exercising the powers under Section 311 of the CrPC. Relevant portion of the same is as under:

*“15. In this context, we also wish to make a reference to certain decisions rendered by this Court on the interpretation of Section 311 CrPC where, this Court highlighted as to the basic principles which are to be borne in mind, while dealing with an application under Section 311*

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<sup>4</sup> (2013) 14 SCC 461



CrPC.

**15.1.** *In the decision in **Jamatraj Kewalji Govani v. State of Maharashtra [AIR 1968 SC 178 : 1968 Cri LJ 231]** , this Court held as under in para 14: (AIR pp. 182-83)*

*“14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction.*

**15.2.** *In the decision in **Mohanlal Shamji Soni v. Union of India [1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595]** , this Court again highlighted the importance of the power to be exercised under Section 311 CrPC as under in para 10: (SCC p. 277)*

*“10. ... In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a*



*witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”*

**15.3.** *In the decision in **Raj Deo Sharma (2) v. State of Bihar [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324]**, the proposition has been reiterated as under in para 9: (SCC p. 613)*

*“9. We may observe that the power of the court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the five-Judge Bench in A.R. Antulay case [**Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 : 1992 SCC (Cri) 93]** nor in Kartar Singh case [**Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899]** such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the court to be essential to the just decision of the case it is the duty of the court to summon and examine or recall and re-examine any such person.”*

**15.4.** *In **UT of Dadra and Nagar Haveli v. Fatehsinh Mohansinh Chauhan [(2006) 7 SCC 529 : (2006) 3***



*SCC (Cri) 300]* , the decision has been further elucidated as under in para 15: (SCC p. 538)

*“15. A conspectus of authorities referred to above would show that the principle is well settled that 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 of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as ‘filling in a lacuna in the 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.”*

**15.5. In *Iddar v. Aabida* [(2007) 11 SCC 211 : (2008) 1 SCC (Cri) 22 : AIR 2007 SC 3029]** , the object underlying under Section 311 CrPC, has been stated as under in para 9: (SCC pp. 213-14)

*“9. ... ‘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 for 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.' [Ed.: As observed in *Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374 at p. 392, para 27: (2006) 2 SCC (Cri) 8.] ”*

*Again, in an unreported decision rendered by this Court dated 8-5-2013 in **Natasha Singh v. CBI** [Ed.: Now reported at (2013) 5 SCC 741] , where one of us was a party, various other decisions of this Court were referred to and the position has been stated as under in paras 15 and 16: (SCC pp. 748-49)*

*“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.*

*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 jeopardised. 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 [AIR 1958 SC 376 : 1958 Cri LJ*



701] , *Zahira Habibulla H. Sheikh v. State of Gujarat* [(2004) 4 SCC 158 : 2004 SCC (Cri) 999 : AIR 2004 SC 3114] , *Zahira Habibullah Sheikh (5) v. State of Gujarat* [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8 : AIR 2006 SC 1367] , *Kalyani Baskar v. M.S. Sampooram* [(2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577] , *Vijay Kumar v. State of U.P.* [(2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240] and *Sudevanand v. State* [(2012) 3 SCC 387 : (2012) 2 SCC (Cri) 179] .j”

51. The crux of the aforesaid judicial precedent reinforces the broad discretionary powers conferred upon courts under Section 311 of the CrPC, emphasizing that the primary duty of a court is to ensure that no relevant evidence is excluded from consideration, if it is essential for a just decision of the case.

52. The Hon’ble Supreme Court has consistently held that procedural constraints must not prevent the courts from exercising its inherent powers to recall witnesses or summon additional evidence when necessary to arrive at the truth. The guiding principle remains that a trial should not result in an inchoate or speculative decision due to an incomplete evidentiary record, and the courts must exercise their discretion judiciously to summon or recall witnesses if the evidence sought to be introduced is germane to the just determination of the case.

53. The purpose of a criminal trial is to ensure that the best possible evidence is placed before the Court, enabling it to reach a just and informed decision. Minor omissions or clerical errors in the filing of evidence should not hinder the ability of the Court to ascertain the truth, provided no prejudice is caused to either of the parties. As such, the



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submission of the complete document serves that objective without necessitating compliance with Section 173(8) of the CrPC.

54. The application of Section 173(8) of the CrPC hinges on whether the prosecution's act of submitting the complete screenshot amounts to further investigation. Section 173(8) of the CrPC applies only when the police conduct further investigation after filing the final report and obtain new evidence that was not originally collected. In such cases, a supplementary chargesheet must be filed before the Magistrate to ensure procedural fairness.

55. In the present case, no further investigation was conducted, nor was any additional evidence collected beyond what was already in the prosecution's possession.

56. The document in question was part of the original record but filed in an incomplete manner and its completion does not introduce any new findings or fresh material but merely ensures that the document is presented in its entirety for proper adjudication. Since no additional investigation was undertaken, and the document was not newly discovered, Section 173(8) of the CrPC does not apply in this case.

57. Accordingly, the first issue stands decided.

58. Having established that the submission of the complete screenshot does not constitute fresh evidence requiring compliance with Section 173(8) of the CrPC but is merely a rectification of an inadvertent omission, this Court shall now determine the second issue i.e., whether the learned Trial Court has erred in allowing the prosecution to introduce the complete document after the conclusion of final arguments thereby, violating the petitioner's right to a fair trial.



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59. A fundamental principle of criminal jurisprudence is that an accused person must be afforded a fair trial, which includes the right to know the case against them, challenge the evidence presented, and not be taken by surprise at an advanced stage of the proceedings.

60. The petitioner herein argues that the introduction of the complete screenshot after the conclusion of final arguments deprives him of an opportunity of fair trial and the same amounts to procedural unfairness.

61. On the other hand, the respondent asserts that no prejudice has been caused to the accused, as the document was already part of the record, albeit in an incomplete form, and its completion does not introduce new allegations or alter the nature of the prosecution's case.

62. In light of these competing positions, this Court must examine whether the learned Trial Court's decision was justified and whether any prejudice has been caused to the accused/petitioner.

63. A fair trial is not merely a statutory right of an accused but also a broader duty of the Court to ensure that justice is administered based on a complete and accurate evidentiary record.

64. This Court is duty bound to assess whether the accused/petitioner has suffered any disadvantage in terms of his defence or if the opposition to the introduction of the complete document is merely technical.

65. It is to be noted that the petitioner has not demonstrated as to how the inclusion of the transaction number materially changes his defence strategy or impairs his ability to contest the case on its merit.

66. Further, it is essential to distinguish between a genuine violation of right to a fair trial and a situation where a party merely loses the benefit of a procedural lapse. The key question is not whether the accused's



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tactical advantage has been diminished but whether they have been deprived of the fundamental safeguards of cross-examination, rebuttal or access to the evidence.

67. However, this Court finds that the submission of the complete document does not introduce any new facts or allegation but only provides a complete version of a document that was already in the case record. Furthermore, the accused will be given the opportunity to cross-examine the re-called witnesses regarding the additional details in the document and thus, the ability to test the evidence through cross-examination defeats any claim of procedural unfairness. Therefore, there is no prejudice being caused to the accused/petitioner in the present case.

68. The learned Trial Court has specifically noted that allowing the prosecution to introduce the complete screenshot would not result in any expense or material prejudice to the accused, except that he would no longer be able to rely on the technical flaw in the prosecution's case in his favor. The Court concerned further observed that in the absence of the complete copy of the document, the prosecution's case would suffer significantly, as the missing transaction number on the incomplete screenshot would prevent it from being linked to the alleged forged voucher. Thus, rather than prejudicing the accused, the absence of the complete document would lead to an inconclusive and incomplete assessment of evidence, ultimately affecting the proper adjudication of the matter.

69. The procedural irregularities must be assessed in light of their actual impact on the accused. In the present case, since the accused is being afforded complete procedural safeguards, including the right to



address arguments/objections *qua* the said document and examine the recalled witnesses, the introduction of the complete screenshot does not violate the principles of a fair trial. Therefore, the petitioner's contention that the learned Trial Court's decision caused him prejudice is without merit.

70. Furthermore, the introduction of the complete document does not infringe upon the accused's right to a fair trial, as he will have sufficient opportunity to cross-examine the recalled witnesses and challenge the document on all permissible grounds. The accused has suffered no material prejudice that would justify interference by this Court. On the contrary, allowing an incomplete evidentiary record to stand would result in an unjust adjudication based on technical infirmities rather than the merits of the case.

71. Thus, this Court finds that the learned Trial Court acted in accordance with the law in allowing the prosecution to submit the complete screenshot of the OHDTM menu of the Finacle System as the same is necessary for ensuring a fair and proper adjudication of the case. Therefore, this Court finds no reason to interfere with the impugned order passed by the learned Trial Court on this ground.

72. Accordingly, the second issue stands decided.

### **CONCLUSION**

73. In light of the foregoing discussion, this Court finds that the submission of the complete screenshot of the OHDTM menu from the Finacle system (used for processing and recording cash deposit transactions including details such as transaction amounts, timestamps and associated voucher numbers) does not tantamount to introduction of



fresh evidence requiring compliance with Section 173(8) of the CrPC, instead, the same is merely a rectification of an inadvertent omission. This Court is of the considered view the said document was already part of the record in an incomplete form, and its completion does not introduce any new allegations, alter the prosecution's case, or necessitate further investigation. The purpose of this submission is solely to ensure that the evidentiary record is accurate and complete, thereby enabling a fair and just adjudication of the case.

74. This Court also finds that the decision of the learned Trial Court to allow the prosecution to introduce the complete screenshot was legally justified, procedurally sound, and necessary for ensuring that the best possible evidence comes before the Court for proper adjudication of the Court.

75. In view of the above findings, it is held that the learned Trial Court has not committed any error or illegality in passing the impugned order and therefore, this Court does not find any reason to exercise its inherent powers under Section 482 of the CrPC/ Section 528 of the BNSS.

76. Accordingly, the impugned order dated 27<sup>th</sup> January, 2023, passed by learned Special Judge (PC Act), Rouse Avenue Courts, New Delhi, in CC No. 105/2019 is, hereby, upheld, and the present petition is dismissed along with the pending applications, if any.

77. It is made clear that any observations made herein are only for the purpose of deciding the present petition and shall not be construed as an expression on the merits of the case. The learned Trial Court shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with the law.



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78. The judgment be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**FEBRUARY 17, 2025**

**Rk/mk/ryp**

*Click here to check corrigendum, if any*