

# Premanshu vs State Of U.P. And Another on 2 January, 2025

**Author: Manju Rani Chauhan**

**Bench: Manju Rani Chauhan**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?A.F.R.

Neutral Citation No. - 2025:AHC:88

Court No. - 52

Case :- APPLICATION U/S 482 No. - 30740 of 2024

Applicant :- Premanshu

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- P.K. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Rajeev Singh, Advocate holding brief of Mr. P.K. Singh, learned counsel for the applicant as well as Mr. Rizwan Ahmad, learned A.G.A. for the State and perused the record.
2. The present application has been filed assailing the order dated 16.06.2023 vide which the application under Section 311 Cr.P.C. as moved by the applicant for examination of P.W.-3 has been rejected.
3. Learned counsel for the applicant submits that the impugned order has been passed without application of judicial mind. During examination of P.W.-3 certain relevant questions which were

important for proper adjudication of the matter could not be asked by the lawyer of the applicant, therefore, it would have been appropriate for the Court to allow the application permitting examination of P.W.-3. The order impugned has been passed in an illegal and arbitrary manner, therefore, the same may be set-aside.

4. Learned A.G.A for the State on the other hand submits that there is no illegality in the order dated 16.06.2023 as after detailed discussion and application of judicial mind, the order impugned has been passed. He further submits that the present application requesting for cross-examination of P.W.-3 has been given on 27.04.2023 that too after recording the statements of the witnesses as well as the accused under Section 313 I.P.C. and the matter has been fixed for hearing. From the records, the court concerned found that 15.04.2022 was the date fixed for recording the statements under Section 313 I.P.C. He further submits that the statements of accused Premanshu and Smt. Mithlesh were recorded and they were cross-examined. Three persons from the side of the accused were also examined. The cross-examination of the said witnesses from the side of the accused took place from the period 23.04.2022 till 27.08.2022. The accused persons stated that they do not want to produce any other witness for proving their case, therefore, the matter was fixed for hearing. On 22.12.2022 an application was given from the side of the accused for summoning P.W.-4 which was allowed and P.W.-4 was re-examined on 16.01.2023.

5. He further contends that nine witnesses have been produced from the side of the prosecution who have been examined and cross-examined by a number of lawyers from the side of the accused namely Om Narayan Dwivedi, Ashok Kumar Trivedi, Dinesh Kumar Pal, Anil Kumar Sachan and Siddharth Verma. Vakalatnama of Sri. Rambahal Vidyarthi was also found in the record of the case. The newly appointed lawyer Sri. Rambahal Vidyarthi moved an application on 27.04.2023 for summoning of P.W.-3 as certain important questions could not be asked from him at the time when he was examined. The court found that the chief examination of P.W.-3 Rambhawan took place on 31.05.2018 and he was cross-examined on the same date. The cross-examination continued on 04.07.2018 and was completed on the said date. The cross-examination is of about three pages. All questions regarding harassment of the deceased, the money as well as gifts which were given as tilak and other questions related to harassment were also asked from P.W.-3. From the aforesaid, it is clear that the applicant is trying to linger on the case by changing the lawyer. Earlier also an application was moved for summoning P.W.-4 which was allowed and he has been re-examined.

6. I have considered the submissions made by the learned counsel for the parties and gone through the records of the present application.

7. Before fathoming correctness of the submissions made by the learned counsel for the parties, it will be worthwhile to refer to Section 311 Cr.P.C., which reads as under:-

"311. Power to summon material witness, or examine person present:-. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, 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 reexamine any such person if his evidence

appears to it to be essential to the just decision of the case."

8. Assiduous scrutiny of aforesaid provision clearly suggests that court enjoys vast power to summon any person as a witness or recall and re-examine a witness, provided, same is essentially required for just decision of the case. Moreover, such exercise of power can be at any stage of inquiry, trial or proceedings under the Code, meaning thereby, applicant can file an application at any time before conclusion of trial. Very object of Section 311 is to bring on record evidence not only from the point of view of accused and prosecution, but also from the point of view of the orderly society.

9. 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 of 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.

10. 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 interest 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.

11. Close scrutiny of aforesaid provision of law further suggests that Section 311 has two parts; first part reserves a right to the parties to move an appropriate application for re-examination of a witness at any stage; but definitely the second part is mandatory that casts a duty upon court to re-examine or recall or summon a witness at any stage if his/her evidence appears to be essential for

just decision of case because, definitely the underlying object of aforesaid provision of law is to ensure that there is no failure of justice on account of mistake on the part of either of parties in bringing valuable piece of evidence or leaving an ambiguity in the statements of witnesses examined from either side.

12. In this backdrop, it would be useful to make a reference to certain decisions rendered by the Supreme Court on the interpretation of Section 311 of the Code, wherein the Apex Court highlighted the basic principles which are to be borne in mind while dealing with an application under Section 311 of the Code.

13. In *Natasa Singh v. C. B. I.*, reported in (2013) 5 SCC 741, the Apex Court, after referring the various decisions of the Supreme Court, has observed that 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 and such power should be exercised with great caution and circumspection.

14. The scope of Section 311 Cr.P.C. has been dealt in the case of *Raja Ram Prasad Yadav vs. State of Bihar and another*, reported in (2013) 14 SCC 461, wherein the Apex Court has held that power under Section 311 Cr.P.C. to summon any person or witness or examine any person already examined can be exercised at any stage provided the same is required for just decision of the case. It may be relevant to take note of the following paras of the judgment:-

"14. A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling

and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution."

15. In this context, I also wish to make a reference to the judgment of the Apex Court in Mannan SK and others vs. State of West Bengal and another, reported in AIR 2014 SC 2950, wherein the the Apex Court Court has held as under:-

"10. The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words 'essential to the just decision of the case' are the key words. The court must form an opinion that for the just decision of the case recall or reexamination of the witness is necessary. Since the power is wide it's exercise has to be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill-up the lacuna. Whether recall of a witness is for filling-up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine."

16. Further in the case of V.N. Patil vs. K. Niranjan Kumar and Ors., reported in (2021) 3 SCC 661, wherein the Apex Court has held that the aim of every Court is to discover the truth. Section 311 Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

17. The principles related to the exercise of the power under Section 311 Cr.P.C. have been well settled by this Court in Vijay Kumar vs. State of Uttar Pradesh and Another, reported in 2011 (8)

SCC 136:-

"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 the Code 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. Before directing the learned Special Judge to examine Smt Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason."

18. This principle has been further reiterated in Mannan Shaikh and Others vs. State of West Bengal and Another, reported in 2014 (13) SCC 59 and thereafter in the case of Ratanlal vs. Prahlad Jat and Others, 2017 (9) SCC 340 and Swapan Kumar Chatterjee vs. Central Bureau of Investigation, 2019 (14) SCC 328. The relevant Paras of Swapan Kumar Chatterjee (supra) are 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 reexamine 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 reexamine 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 reexamination 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."

19. In the case of State (NCT of Delhi) vs. Shiv Kumar Yadav (2016) 2 SCC 402, the Apex Court has observed that recall of a witness under Section 311 must be bona fide and genuine. Secondly, applications for recall of a witness under Section 311 should not be allowed as a matter of course and the discretion given to the Court must be exercised judiciously, not arbitrarily.

20. The Apex Court in the case of Manju Devi v. State of Rajasthan, reported in (2019) 6 SCC 203 has held as under :-

"10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [ Vide Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; Mina Lalita Barua v. State of Orissa, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] . In Natasha Singh v. CBI [Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] , though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under:

"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.

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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."

21. Aforesaid exposition of law clearly suggests that a fair trial is main object of criminal jurisprudence and it is duty of court to ensure such fairness is not hampered or threatened in any manner. It has been further held in the aforesaid judgments that fair trial entails interests of accused, victim and society and therefore, grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right. The Apex Court has categorically held in the aforesaid judgment that adducing evidence in support of the defence is a valuable right and denial of such right would amount to denial of a fair trial.

22. The Apex Court, while culling out certain principles required to be borne in mind by the courts while considering applications under Section 311, has held that exercise of widest discretionary powers under Section 311 should ensure that judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts. Hon'ble Apex Court has further held that if evidence of any witness appears to be essential for 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 because very object of exercising power under Section 311 is to find out truth and render a just decision. Most importantly, in the judgment referred to herein above, the Apex Court has held that court should bear in mind that no party in trial can be foreclosed from correcting errors and that 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.

23. From perusal of the records of the present application and application filed by the applicant under Section 311 Cr.P.C. as well as from examining the order impugned, this Court finds that during trial, the present application requesting for cross-examination of P.W.-3 has been given on 27.04.2023 that too after recording the statements of the witnesses as well as the accused under Section 313 I.P.C. and the matter has been fixed for hearing. From the records, the court concerned found that 15.04.2022 was the date fixed for recording the statements under Section 313 I.P.C. The statements of accused Premanshu and Smt. Mithlesh were recorded and they were cross-examined. Three persons from the side of the accused were also examined. The cross-examination of the said witnesses from the side of the accused took place from the period 23.04.2022 till 27.08.2022. The accused persons have stated before the court concerned that they do not want to produce any other witness for proving their case, therefore, the matter was fixed for hearing. On 22.12.2022 an application was given from the side of the accused for summoning P.W.-4 which was allowed and P.W.-4 was re-examined on 16.01.2023. Nine witnesses have been produced from the side of the



prosecution who have been examined and cross-examined. Vakalatnama of Sri. Rambahal Vidyarthi was also found in the record of the case. The newly appointed lawyer Sri. Rambahal Vidyarthi moved an application on 27.04.2023 for summoning of P.W.-3 as certain important questions could not be asked from him at the time when he was examined. The court found that the chief examination of P.W.-3 Rambhawan took place on 31.05.2018 and he was cross-examined on the same date. The cross-examination continued on 04.07.2018 and was completed on the said date. From the application made by the applicant under Section 311 Cr.P.C., it is apparently clear that the same has been filed only for lingering on the trial of the case.

24. The fairness of trial has to be seen not only from the point of view of the victim, but also from the point of view of the accused and the society. It is not possible to lay down precise situations when such power can be exercised. The Legislature in its wisdom has left the power undefined. Thus, the scope of power under Section 311 Cr.P.C. has to be considered from case to case.

25. The accused cannot have the witness recalled for re-examination as a matter of right and extraordinary provision cannot be used as an afterthought to fill the gaps.

26. Considering the materials brought on record and keeping the principles laid down by the Hon'ble Supreme Court for exercise of power under section 311 Cr.P.C., this Court is of the opinion that observations and findings recorded by the trial Court in rejecting the application under Section 311 Cr.P.C. of the applicant under the facts and circumstances of the case are fully sustainable. The trial Court has committed no illegality or infirmity in the order impugned by rejecting the application of the applicant. There appears no abuse of process of the Court also. There is no evidence on record to satisfy this Court that trial would be seriously prejudiced if the said witnesses are not recalled for re-examination or further examination.

27. In view of the above, the application of the applicant having no merit deserves to be rejected. In the result, the application is rejected.

28. The office is directed to communicate this order to the court concerned to proceed with the case in accordance with law.

29. The Court would like to appreciate the hard work put in by Ms. Shreya Shukla, Research Associate, who has drawn attention to detail and the same shows in her work of providing legal assistance in this matter.

Order Date :- 2.1.2025 Kalp Nath Singh