IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 471 of 2018.

Date of decision: 27.11.2018.

Ankur Sharma & anr. **.....Petitioners**

Versus

State of H.P. **..... Respondent**

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?*[1] *No.

For the Petitioners : Mr. H. C. Sharma, Advocate.

For the Respondent: Mr. Sudhir Bhatnagar, Addl. A.G. with Ms. Svaneel Jaswal, Dy. A.G.

Tarlok Singh Chauhan, Judge (Oral).

Aggrieved by the rejection of the application filed by the petitioners under Section 311 Cr.P.C., for recalling/re-examining of one Navjot Singh, the petitioners have filed the instant petition assailing the order passed on 27.06.2018.

2. The petitioners are accused in a criminal case and are facing trial, which is pending before the learned trial Court. During the pendency of the trial, the petitioners moved an application under Section 311 Cr.P.C. for recalling/re-examining the witness Navjot Singh son of Shri Surjeet Singh on the ground that Navjot Singh is not a natural and eye witness and is an interested witness who has deposed at the instance of the

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

complainant Dila Ram. It was further averred that the said witness had no occasion to visit the area in the evening and the deposition of the said witness is not natural and the said witness was, therefore, required to be recalled/re-examined on the aspect of the matter for the determination of the case property and for the advancement of the justice.

3. The respondent opposed the application by filing reply, wherein it was submitted that Navjot Singh examined on 31.08.2012 and deposed as per the version under Section 161 Cr.P.C. that the incident occurred in his presence. During cross-examination, he denied that he was giving statement at the instance of the complainant.

4. The learned trial Court rejected the application by recording following reasons:-

> "The object of provision as enshrined under Section 311 of Code of Criminal Procedure is that it empowers the court to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined provided that the evidence of such person appears to the court to be essential for the just decision of the case and it is not meant to fill up lacuna left. It is also pertinent to mention here that one more eye witness has been examined while appearing as PW-5 Neelam and full opportunity has been given to applicant/accused to cross-examine this witness also. So, this witness is also helpful to elucidate any controversy, if left, in the present case. The applicant/accused at this stage, appears to be making

endeavour to fill up the lacuna by filing the present application for recalling the said PW-11 Navjot Singh and therefore, in the absence of any reasonable and plausible explanation for calling the said PW-11 Navjot Singh, the present application cannot be said to be having merits. Therefore, in view of the aforesaid reasons and discussion and facts and circumstances of the present case, the present application cannot be held to be maintainable and the same is as such dismissed. Application stands dispose of. It be registered separately and tagged with the main case file for record."

I have heard learned counsel for the parties and have gone through the material placed on record.

5. At the outset, this Court is firstly required to deal with the scope and ambit of Section 311 Cr.P.C. The provisions have been considered in detail by the Hon'ble Supreme Court in ***State of Haryana*** *versus* ***Ram Mehar and others (2016) 8 SCC 762***, wherein the entire law on the subject was discussed in detail in the following manner:-

> *"26. Having dwelled upon the concept of fair trial we may now proceed to the principles laid down in the precedents of this Court, applicability of the same to a fact situation and duty of the court under Section 311 CrPC. The said provision reads as follows:-*
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> > *"**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 re- examine any such person if his evidence appears to it to be essential to the just decision of the case."*

27. A quarter of a century back, a two-Judge Bench in Mohanlal Shamji Soni v. Union of India 1991 Supp (1) SCC 271 has held that: (SCC pp.276-77, paras 7-9)

> *"7.....Section 311 is an almost verbatim reproduction of Section 540 of the old Code except for the insertion of the words 'to be' before the word 'essential' occurring in the old section. This section is manifestly in two parts. Whereas the word used in the first part is 'may' the word used in the second part is 'shall'. In consequence, the first part which is permissive gives purely discretionary authority to the Criminal Court and enables it 'at any stage of enquiry, trial or other proceedings' under the Code to act in one of the three ways, namely,*
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> *(1) to summon any person as a witness, or*
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> *(2) to examine any person in attendance, though not summoned as a witness, or*
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> *(3) to recall and re-examine any person already examined.*
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> *8. The second part which is mandatory imposes an obligation on the court —*
>
> *(1) to summon and examine, or*
>
> *(2) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.*
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> *9. The very usage of the words such as 'any court', 'at any stage', or 'of any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that this section is expressed in the widest possible terms and do not limit the discretion of the court in any way. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow for any discretion but it binds and compels the court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case."*
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> *(emphasis supplied)*

The aforesaid passages make it abundantly clear about the broad applicability of the provision and the role of the court in two distinct situations.

28. In the said authority the Court referred to the earlier pronouncements in Rameshwar Dayal and others v. State of Uttar Pradesh (1978) 2 SCC 518, State of West Bengal v. Tulsidas Mundhra 1963 Supp (1) SCR 1, Jamatraj Kewalji Govani v. State of Maharashtra AIR 1968 SC 178 and proceeded to opine that: (Mohanlal Shamji Soni Case[21], SCC p.283, para 27)

> *"27.The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case."*
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> *(emphasis supplied)*

It is important to note here in the said case, it was also observed that: (SCC p.280, para 18)

> *"18....Though Section 540 (Section 311 of the new Code) is, in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which they should be exercised, that power is circumscribed by the principle that underlines Section 540, namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by 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 rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties".*
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> *(emphasis supplied)*

29. In Rajendra Prasad v. Narcotic Cell (1999) 6 SCC 110 occasion arose to appreciate the principles stated in Mohanlal Shamji Soni (supra). The two-Judge Bench took note of the observations made in the said case which was to the effect that while exercising the power under Section 311 of CrPC, the court shall not use such power "for filling up the lacuna left by the prosecution". Explaining the said observation Thomas, J. speaking for the Court observed: (Rajendra Prasad Case [25], SCC P.113, para 8)

> *"8.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."*
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> *(emphasis supplied)*

30. After so stating the two-Judge bench referred to the exigencies of the situation and the ample power of the court as has been laid in Mohanlal Shamji Soni (supra) and further referred to the authority in Jamatraj Kewalji Govani (supra) and opined thus (Rajendra Prasad case[25], SCC p.114, para 12)

> *"12.We cannot therefore accept the contention of the appellant as a legal proposition that the court cannot exercise power of resummoning any witness if once that power was exercised, nor can the power be whittled down merely on the ground that the prosecution discovered laches only when the defence highlighted them during final arguments. The power of the court is plenary to summon or even recall any witness at any stage of the case if the court considers it necessary for a just decision. The steps which the trial court permitted in this case for resummoning certain witnesses cannot therefore be spurned down or frowned at."*
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> *(emphasis supplied)*

31. The aforesaid decision in Rajendra Prasad case has to be appropriately understood. It reiterates the principle stated in Mohanlal Shamji Soni's case. It has only explained the sphere of lacuna by elaborating the same which has taken place due to oversight and non-production of material evidence due to inadvertence. It is significant to note that it has also reiterated the principle that such evidence is necessary for a just decision by the Court.

32. In U.T. of Dadra & Nagar Haveli and another v. Fatehsinh Mohansinh Chauhan (2006) 7 SCC 529, the Court was dealing with an order passed by the High court whereby it had allowed the revision and set aside the order passed by the learned trial judge who had exercised the power under Section 311 CrPC to summon certain witnesses. The Court referred to the earlier authorities and ruled that it 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, as it is 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. Be it stated, in the said case the court came to held that summoning of the witnesses was necessary for just and fair decision of the case and accordingly it allowed the appeal and set aside the order passed by the High court.

33. In Rajaram Prasad Yadav v. State of Bihar and another (2013) 14 SCC 461 the Court after referring to Section 311 CrPC and Section 138 of the Evidence Act observed that Section 311 CrPC vest widest powers in the court when it comes to the issue of summoning a witness or to recall or re-examine any witness already examined. Analysing further with

regard to "trial", "proceeding", "person already examined", the Court ruled that invocation of Section 311 CrPC 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. The Court observed that 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 is concerned, 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. The learned Judges further ruled that 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. It was also stated that while such a widest power is invested with the court, exercise of such power should be made judicially and also with extreme care and caution.

34. The Court referred to the earlier decisions and culled out certain principles which are to be kept in mind while exercising power under Section 311 CrPC. We think it seemly to reproduce some of them: (Rajaram Prasad case[27], SCC pp. 473-74, para 17)

> *"17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.*
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> *17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.*

17.4. 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 for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a 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.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect 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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17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a 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.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

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17.14. The power 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 care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right." *(emphasis supplied)*

35. Recently in Shiv Kumar Yadav (supra), the Court reproduced the principles culled out in Rajaram Prasad Yadav's case and thereafter referred to the authority in Hoffman Andreas (supra) wherein it has been laid down that: (Shiv Kumar Yadav case[9], SCC p.416, para 14)

> *"14…'6……The counsel who was engaged for defending the appellant had cross-examined the witnesses but he could not complete the trial because of his death. When the new counsel took up the matter he would certainly be under the disadvantage that he could not ascertain from the erstwhile counsel as to the scheme of the defence strategy which the predeceased advocate had in mind or as to why he had not put further questions on certain aspects. In such circumstances, if the new counsel thought to have the material witnesses further examined the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible". (Hoffman Andreas case, SCC, p.432, para 6)"*

The Court in Shiv Kumar Yadav (supra) case explained the said authority by opining thus:(SCC p.416, para 15)

> *"15. …..While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross- examination."*

We respectfully agree with the aforesaid exposition of law.

36. Keeping in mind the principles stated in the aforesaid authorities the defensibility of the order passed by the High Court has to be tested. We have already reproduced the assertions made in the petition seeking recall of witnesses. We

have, for obvious reasons, also reproduced certain passages from the trial court judgment. The grounds urged before the trial court fundamentally pertain to illness of the counsel who was engaged on behalf of the defence and his inability to put questions with regard to weapons mentioned in the FIR and the weapons that are referred to in the evidence of the witnesses. That apart, it has been urged that certain suggestions could not be given. The marrow of the grounds relates to the illness of the counsel. It needs to be stated that the learned trial Judge who had the occasion to observe the conduct of the witnesses and the proceedings in the trial, has clearly held that recalling of the witnesses were not necessary for just decision of the case. The High Court, as we notice, has referred to certain authorities and distinguished the decision in Shiv Kumar Yadav (supra) and Fatehsinh Mohansinh Chauhan (supra). The High Court has opined that the court has to be magnanimous in permitting mistakes to be rectified, more so, when the prosecution was permitted to lead additional evidences by invoking the provisions under Section 311 CrPC. The High Court has also noticed that the accused persons are in prison and, therefore, it should be justified to allow the recall of witnesses.

37. The heart of the matter is whether the reasons ascribed by the High Court are germane for exercise of power under Section 311 CrPC. The criminal trial is required to proceed in accordance with Section 309 of the CrPC. This court in Vinod Kumar v. State of Punjab (2015) 3 SCC 220, while dealing with delay in examination and cross-examination was compelled to observe thus:(SCC pp. 226-27, para 1)

> *"1.If one is asked a question, what afflicts the legally requisite criminal trial in its conceptual eventuality in this country the two reasons that may earn the status of phenomenal signification are, first, procrastination of trial due to non-availability of witnesses when the trial is in progress and second, unwarranted adjournments sought by the counsel conducting the trial and the unfathomable reasons for acceptation of such prayers for adjournments by the trial courts, despite a statutory command under Section 309 of the Code of Criminal Procedure, 1973 (CrPC) and series of pronouncements*

> *by this Court. What was a malady at one time, with the efflux of time, has metamorphosed into malignancy. What was a mere disturbance once has become a disorder, a diseased one, at present".*

And again: (SCC p.246, para 57.5)

> *"57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort."*

38. Yet again, in Gurnaib Singh v. State of Punjab (2013) 7 SCC 108, the agony was reiterated in the following expression: (SCC p.124, para 35)

> *"35. We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same."*

It was thereafter observed as under:-

> *"39. There is a definite purpose in referring to the aforesaid authorities. We are absolutely conscious about the factual matrix in the said cases. The observations were made in the context where examination-in- chief was deferred for quite a long time and the procrastination ruled as the Monarch. Our reference to the said authorities should not be construed to mean that Section 311 CrPC should not be allowed to have its*

full play. But, a prominent one, the courts cannot ignore the factual score. Recalling of witnesses as envisaged under the said statutory provision on the grounds that accused persons are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, we are inclined to think, are not acceptable in the obtaining factual matrix. The decisions which have used the words that the court should be magnanimous, needless to give special emphasis, did not mean to convey individual generosity or magnanimity which is founded on any kind of fanciful notion. It has to be applied on the basis of judicially established and accepted principles. The approach may be liberal but that does not necessarily mean "the liberal approach" shall be the rule and all other parameters shall become exceptions. Recall of some witnesses by the prosecution at one point of time, can never be ground to entertain a petition by the defence though no acceptable ground is made out. It is not an arithmetical distribution. This kind of reasoning can be dangerous."

6. The scope of the aforesaid provisions of Sections 311 and 319 Cr.P.C. again came up for consideration before the Hon'ble Supreme Court recently in ***Amrutbhai Shambhubhai Patel*** *versus* ***Sumanbhai Kantibhai Patel and others, (2017) 4 SCC 177,*** wherein it was observed as under:-

"48. As adverted to hereinabove, whereas Section 311 of the Code empowers a Court at any stage of any inquiry, trial or other proceeding, to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, if construed to be essential to be just decision of the case, Section 319 authorizes a Court to proceed against any person, who though not made an accused appears, in course of the inquiry or trial, to have committed the same and can be tried together. These two provisions of the Code explicitly

accoutre a Court to summon a material witness or examine a person present at any stage of any inquiry, trial or other proceeding, if it considers it to be essential to the just decision of the case and even proceed against any person, though not an accused in such enquiry or trial, if it appears from the evidence available that he had committed an offence and that he can be tried together with the other accused persons."

7. Yet, again the scope of Section 311 Cr.P.C. was a subject matter of recent decision of the Hon'ble Supreme Court in ***Ratanlal*** *versus* ***Prahlad Jat and others AIR 2017 SC 5006*** wherein it was 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.

18. In Vijay Kumar v. State of Uttar Pradesh and Anr., (2011) 8 SCC 136: (2011 AIR SCW 6236), this Court while explaining scope and ambit of Section 311 has held as under:-

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

19. In Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Others, (2006) 3 SCC 374: (AIR 2006 SC 1367), this Court has considered the concept underlining under Section 311 as under:-

> *"The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind".*

20. In State (NCT of Delhi) v. Shiv Kumar Yadav & Anr., (2016) 2 SCC 402 : (AIR 2015 SC 3501), it was held thus:-

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

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

8. Thus, what can be clearly gathered from the aforesaid exposition of law is that Section 311 Cr.P.C. has been enacted to enable the Court to find the truth and render a just decision whereunder any Court by exercising its discretionary authority at any stage of inquiry, trial or other proceedings 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 already examined, who is 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. Yet, this power has to be exercised only for strong and valid reasons that too with care, 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.

9. Bearing in mind the law propounded in the aforesaid case, it would be noticed that in the application filed by the petitioner under Section 311 Cr.P.C. it is specifically pleaded that

the witness Navjot Singh sought to be recalled/re-examined was not a natural and eye witness and was an interested witness, who had deposed at the instance of the complainant Dila Ram. It was also averred that the said witness had no occasion to visit the area in the evening and the deposition of the said witness is not natural, therefore, is required to be recalled/re-examined.

10. To my mind, the learned trial Court adopted rather a hyper technical view in rejecting the application, however, what it appears to have ignored is the purpose for which the salutary provisions of Section 311 has been incorporated. It has failed to adhere to the well known adage that every trial is a voyage in which quest for truth is the goal.

11. In the administration of justice, Judges and Lawyers play equal roles. Like Judges, Lawyers must also ensure that truth triumphs in the administration of justice. Truth is the foundation for justice. It is incumbent upon all the Judicial Officers to make an endeavour to ascertain truth in every matter and to leave no stone unturned in achieving this object.

12. In view of the aforesaid discussion, the petition is allowed and the order dated 27.06.2018, passed by the learned Judicial Magistrate Ist Class, Court No. 7, Shimla H.P. in Case No. 24-2 of 2011, is set aside.

27th November, 2018 **(Tarlok Singh Chauhan)**
(sanjeev) **Judge**