



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(234)

CRM-M-41301-2025 (O&M)
Date of Decision: 26.09.2025

Shikha Aggarwal

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Kunal Dawar, Advocate and
Mr. Mayank Aggarwal, Advocate
for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

Mr. Manish Soni, Advocate and
Ms. Poorvi Sharma, Advocate
for respondent No.2.

KIRTI SINGH, J. (ORAL)

CRM-32683-2025

Allowed as prayed for subject to all just exceptions.

CRM-M-41301-2025

1. The instant petition has been filed for setting order dated 21.03.2025, passed by learned JMIC, Faridabad, vide which the application filed by the petitioner under Section 311 Cr.P.C. in FIR No.144 dated 06.03.2017, registered under Sections 406 and 498-A of IPC, at Police Station Faridabad Central, District Faridabad has been dismissed.

2. The brief factual matrix is that the marriage between the petitioner and respondent No.2 was solemnized on 23.02.2012 and out of the said wed-lock a daughter was born on 16.11.2014. Thereafter due to some matrimonial dispute, the present FIR was got registered against respondent



No.2 and his parents by the present petitioner. However, upon investigation, parents of respondent No.2 were declared innocent and final report under Section 173 Cr.P.C. was filed only against respondent No.2. Pursuant thereto, respondent No.2 was charged for offences punishable under Sections 498-A and 406 of IPC. During the course of trial, examination-in-chief of the petitioner was recorded on 09.01.2018, and an application which was also filed under Section 319 Cr.P.C. for summoning parents of respondent No.2 as additional accused, which was dismissed vide order dated 13.09.2018 by the learned trial Court.

3. Subsequently, the petitioner moved another application, under Section 173(8) Cr.P.C., seeking further investigation on the ground that respondent No.2 was having illicit relations with a lady, which was dismissed vide order dated 25.11.2019. The said order was challenged before the Court of Addl. Sessions Judge, Faridabad by filing CRR-621-2019, which remanded the matter back to the learned trial Court, whereupon directions of further investigation were issued vide order dated 10.02.2021. As such, in the investigation conducted thereafter, it was found that respondent No.2 was in fact in constant touch with the lady, with whom he was purported to be having illicit relations, as there were 346 calls made between the two from 08.05.2020 to 16.02.2021. Thereafter, the petitioner filed an application under Section 311 Cr.P.C. for producing certain documents by way of additional evidence to substantiate the allegations qua the illicit relationship of respondent No.2 and the same was partly allowed, qua production of certain documents in support of the allegations levelled against respondent No.2 having an extra marital affair. Thereupon, a subsequent application was moved by the petitioner, seeking permission to make further statements in her examination-in-chief before with regard to



the said documents. However, the same was dismissed vide order dated 21.03.2025. Revision petition filed thereagainst was also dismissed on 17.05.2025. Aggrieved by the same, the petitioner initially filed CRM-M-30561-2025 but withdrew it on 29.05.2025 with liberty to avail alternate remedy before appropriate forum. Now, the present petition.

4. Learned counsel for the petitioner *inter alia* submits that the petitioner was subjected to constant cruelty at the hands of respondent No.2, constraining her to file the aforementioned FIR. During the course of trial, subsequent investigation was carried out, whereupon certain facts establishing the extra marital affair of respondent No.2 surfaced. As such, a supplementary challan was presented. Thus, an application under Section 311 Cr.P.C. was moved by the petitioner, which was allowed by the Court of learned ACJM, Faridabad, permitting the petitioner to produce certain documents necessary for her to prove that respondent No.2 had infact committed the alleged offence. The petitioner thereafter moved another application under Section 311 Cr.P.C, seeking permission for recording her testimony with respect to the said documents, which was erroneously and arbitrarily dismissed by way of the impugned order. It is submitted that in case the said subsequent application under Section 311 Cr.P.C. is not allowed, the purpose of the former application filed by the petitioner, which was allowed, would be defeated. Therefore, it is prayed that the impugned order be quashed and set aside and the petitioner may be permitted to appear as witness for further examination-in-chief.

5. Per contra, learned counsel for respondent No.2 submits that the impugned order dismissing the application filed by the petitioner was rightly passed. The petitioner has been constantly trying to delay the conduct of the trial, by filing multiple applications one after the other,



with the sole purpose of causing harassment to respondent No.2. The allegations that are sought to be proved against respondent No.2 are of bigamy, which is not only misplaced, but also without any substance. In fact, the decree of divorce was granted on 26.08.2022 in favour of respondent No.2, on the grounds of cruelty. As such, it is prayed that the present petition be dismissed.

6. Heard.

7. Before proceeding further, it would be apposite to refer to the provision contained Section 311 Cr.P.C., the bare language of which reads thus:

“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.”

8. The Hon'ble Supreme Court, in ***V. N. Patil Vs. K. Niranjan***, reported in ***2021 (2) R.C.R. (Criminal) 310***, while examining the scope of Section 311 Cr.P.C observed that:

“Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 significant expression that occurs is 'at any stage of enquiry or trial or other proceeding under this Code'. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion.”

9. This principle has also been reiterated in ***Swapan Kumar***



Chatterjee v. Central Bureau of Investigation, reported in **2019(14) SCC 328**, the relevant paras of which read thus:

"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."

10. Trite to say that though the Court is vested with the power to call witnesses at any stage in order to meet the ends of justice, however, it must be cautioned to ensure that the same is not sought to be invoked only to fill up the lacunas left behind in a case, or be used as a tactic to delay the proceedings.

11. Reverting to the case at hand, a perusal of the judicial file reveals that the trial in the instant case is still at the nascent stage, despite the FIR having been lodged back in the year 2017. Divorce was decreed in favour of respondent No.2 on the ground of cruelty on 26.08.2022. Pertinently, the examination-in-chief of the petitioner stood completed on 09.01.2018, whereafter the case was fixed for her cross-examination. It was then that the instant application was moved, seeking her recall to record her further examination-in-chief, to prove the documents which were allowed to be produced vide order dated 02.01.2023. The argument sought to be proved by the petitioner is that respondent No.2 is in an extra marital affair with a said lady, a fact which admittedly surfaced much after the registration of the FIR, and thus does not form a part of the substratum of the same.



Furthermore, it is not the case that the petitioner would not be able to establish her case regarding the said documents in accordance to law otherwise than from her testimony. However, in case the present application is allowed it would further delay the trial, leading the process itself becoming a punishment for the accused person, which in any case cannot be permitted by this Court. Even otherwise, the parameters required to be fulfilled for the allowing of an application under Section 311 Cr.P.C. also remain unmet. In fact, in case grafting of subsequent incidents into the trial under the guise of Section 311 Cr.P.C. would not only change the complexion of the case but also set an untenable precedent whereby the trial would never attain finality, each fresh allegation necessitating recall.

12. In light of the foregoing discussion and in view of the judgments referred to herein-above, the present petition stands dismissed.

13. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

September 26, 2025
Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No