



examination to be essential for the just decision of the case. Aggrieved by the same, the petitioners (accused) filed an application before learned trial Court for not recalling this witness PW-6 ASI Jatinderpal Singh. Learned Special Court heard both the sides, however, finding no merit, declined the same vide order dated 07.04.2025. Hence, the petitioners approached this Court praying for setting aside the order dated 07.04.2025.

3. It has been vehemently contended by learned counsel for the petitioner that after framing of charges, prosecution has taken ample opportunities, wherein learned trial Court issued evenailable summons for summoning the prosecution witnesses. He submits that ASI Jatinderpal Singh was given up on the statement of the Addl. PP vide statement dated 01.04.2024 submitting that the witness was unnecessary. He submits that Investigating Officer ASI Baljinder Singh expired prior to the summoning of the ASI Jatinderpal Singh, hence, his death was already in the knowledge of the prosecution. He, thus, submits that objection to the summoning of ASI Jatinderpal Singh was raised by the petitioners on 13.02.2025 for disallowing this witness to be examined, however, learned trial Court had illegally declined the same. He submits that this witness had already been given up by the prosecution and thus, summoning him under Section 311 Cr.P.C. at this stage amounts to fill up the lacuna of the case of the prosecution even after availing of so many opportunities and examination of the witness would also result in delay in trial. He, thus, submits that the impugned order being against law, deserves to be set aside and the summoning of witness ASI Jatinderpal Singh be disallowed.

3. After hearing learned counsel for the petitioner and perusing



the record, it is deciphered that the petitioners have been prosecuted in FIR No.118 dated 29.07.2018. On presentation of the challan, the Investigating Officer ASI Baljinder Singh was cited as a witness. ASI Jatinderpal Singh was also cited as a witness being the attesting witness of recovery memo. However, during trial the Investigating Officer ASI Baljinder Singh was expired. Witness ASI Jatinderpal Singh though was given up at one stage on the statement of the prosecution, however, on the death of Investigating Officer, learned trial Court found this witness to be essential for the just decision of the case and hence, he was recalled for his examination.

4. There is no gainsaying that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and have been incorporated to secure the ends of justice. For resolving the controversy, appreciation of provisions of Section 311 Cr.P.C. are relevant, which read as under:-

“311. Power to summon material witnesses, 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.”

5. From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential to the just decision of the case. However, Hon'ble Supreme Court in the case of Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328 held as under:-



“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 wide 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.”

6. There is no dispute regarding the law settled by Hon’ble Supreme Court time and again that the power granted under Section 311 Cr.P.C. should be exercised in a liberal manner, if the Court finds that evidence of the witness sought to be examined is essential for just decision of the case. From the facts and circumstances of the present case and the law settled, it is evident that examination of witness ASI Jatinderpal Singh is just essential for the just decision of the case.

7. Thus, this Court does not find any infirmity in the impugned order passed and hence, the present petition being devoid of any merit, is hereby dismissed. However, learned trial Court would provide due opportunities to the petitioners for cross-examination of the witness.

29.04.2025
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No