



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-4267-2025

Reserved on: 21.04.2025

Pronounced on : 29.05.2025

ADG ONLINE SOLUTIONS PVT LTD

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

....Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Abhinav Sood, Advocate for respondent No.2.

SANJIV BERRY, J.

1. The present petition has been preferred by the petitioner for quashing of the order dated 09.01.2025 (Annexure P-7) passed by learned Judicial Magistrate First Class, Faridabad, whereby an application under Section 311 Cr.P.C (Now Section 348 BNSS, 2023) moved by the petitioner through learned Public Prosecutor, had been dismissed during pendency of trial in case FIR No. 412, dated 21.06.2016, under Sections 120-B, 406, 408, 409, 420, 467, 471, 474 IPC (Charges framed under Sections 420, 467, 468, 471, 474, 406, 409, 120B IPC) Police Station Suraj Kund, Faridabad.



2. Brief facts of the case are that the aforesaid FIR was registered, on the complaint of ADG Online Solutions (P) Limited to the effect that the complainant maintains current bank account as well as an overdraft facility of ₹20,00,000/- with Charm Wood Village Branch of HDFC Bank Limited. Mrs Deepa Dayal, Director of the complainant-Company is the authorized signatory. Mr. Mukesh Kumar Pandey-respondent No.2 was an account Manager and had been entrusted to manage the Company's financial affairs, including investments and accounts book for about four years. The Director of the Company issued cheques along with letter to create Fixed Deposits, however, instead of depositing the cheques for Fixed Deposits, in collusion with other parties, transferred the cheques amount into overdraft account by forging signatures leading to embezzlement of ₹2.50 crores to ₹3 crores. The Company's overdraft account had been non-operational since 2013, with no SMS notification for transactions, leaving the Company unaware of fraudulent activities, despite admitting the fraud, accused failed to return the misappropriated funds, hence the FIR. After completion of investigation, challan had been filed against respondent No.2 and list of 15 witnesses was cited in the challan. Thereafter, charges were framed against respondent No.2 on 25.01.2017 (Annexure P-2). During trial, specimen signatures of respondent No.2 and the Director of the petitioner Company were sent to RFSL, Bhondsi, for comparing the same with the forged signatures and vide report dated 12.09.2018 (Annexure P-3) Senior Scientific Officer, RFSL, Bhondsi had admitted the signatures to be of two different persons and the



same was tendered into evidence as Exhibit PX by HC Satya Narayan on 22.07.2019.

3. Learned counsel for the petitioner *inter alia* contends that after completion of prosecution evidence, the trial is fixed for defence evidence. He contends that the report given by the Senior Scientific Officer or handwriting expert is not covered under Section 293 CrPC, therefore, petitioner moved an application under Section 311 Cr.P.C (Annexure P-5) through Public Prosecutor calling Narender Kumar, Senior Scientific Officer, RFSL Bhondsi, as prosecution witness in order to prove the FSL Report dated 12.09.2018 (Annexure P-3) and vide impugned order dated 09.01.2025 (Annexure P-7), the aforesaid application was dismissed. He contends that learned trial Court erred in declining the application under Section 311 Cr.P.C moved by the petitioner for the purpose of summoning Narender Kumar, Senior Scientific Officer, RFSL Bhondsi as prosecution witness in order to prove FSL Report dated 12.09.2018 (Annexure P-3). He contends that it is settled preposition that the trial Court has ample power to summon any witness for the purpose of cross-examination or re-examination and in the present case, examination of Narender Kumar, Senior Scientific Officer, RFSL Bhondsi as prosecution witness in order to prove FSL Report, is essential for the just decision of the case, which was wrongly declined by learned trial Court. In support of his contentions learned counsel for the petitioner has referred ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) R.C.R. (Criminal) 726 ; AG vs. Shiv Kumar Yadav and Anr. 2015(4) RCR (Criminal) 312 (SC), Sunil Kumar Vs. State of Punjab***



2013(8) RCR (Criminal) 3004 and Varsha Garg Vs. State of Madhya Pradesh 2022(4) RCR (Criminal) 328, hence prayed for acceptance of the petition.

4. On the contrary, the learned State counsel, assisted by learned counsel for respondent No.2, has assailed these arguments by submitting that the learned trial Court has passed the impugned order dated 09.01.2025 (Annexure P-7) in accordance with the law and the instant application has been moved by the petitioner just to delay the proceedings without any basis. He has referred to the Notification dated 26.11.2024 issued by Government of Haryana vide No. S.O.60/C.A.46/2023/S.329/2024, notifying the Senior Scientific Officers, Senior Scientific Assistants of the Forensic Science Laboratory, Regional Forensic Science Laboratories and Mobile Forensic Science Units of Haryana as Government Scientific Experts for the purposes of Section 329 BNSS (erstwhile Section 293 CrPC). He contends that there is no merit in the present petition and the impugned order does not suffer from any infirmity and prays for dismissal of the petition.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. It is, apt to mention here that there is no dispute so far as the powers conferred under Section 311 Cr.P.C upon the trial Court is concerned and the same power has to be used with the rider that it can be used only when it appears to the Court that it is essential for just decision of the case that a particular witness, may be recalled for further examination.



7. In this regard, the Hon'ble Apex Court has laid down certain principles to be borne in mind while dealing with application under Section 311 Cr.P.C in ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) R.C.R. (Criminal)726***, wherein it has been laid down that the Court can summon a person to appear as witness , if it is deemed essential for the just decision of the case and the power under Section 311 Cr.P.C should be resorted to by the Court only with the object of finding out the truth and should be exercised judiciously. It is further held therein that the exigency of the situation, fair play and good sense should be the safeguard while exercising such discretionary power under this Section.

8. Further, it has been held by Hon'ble Apex Court in ***AG vs. Shiv Kumar Yadav and Anr. 2015(4) RCR (Criminal) 312 (SC)***, that the power under Section 311 Cr.P.C 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 decision of the case.

9. Thus, it is settled preposition that the discretionary power under Section 311 Cr.P.C is to be exercised by learned trial Court only if the evidence of witness appears to the Court to be essential for the just decision of the case. The paramount requirement while exercising this power is the "*just decision*" and for that purpose, the essentiality of a person to be recalled or re-examined has to be ascertained judiciously and with extreme care and caution.

10. It will not be out of place to mention here that one of the ground taken by learned Magistrate while dismissing the application happens to be



the stage of the case that the evidence of the prosecution has been closed and the presently the case is fixed for defence evidence. The Hon'ble Supreme Court in its judgment *Varsha Garg Vs. State of Madhya Pradesh (supra)* while considering the powers of the Court to examine the witness under Section 311 Cr.P.C. has categorically observed that the Court is vested with broad and wholesome power under this provision to summon and examine, recall and re-examine any material witness at any stage and closing of the prosecution evidence is not absolute bar thereto. It has been held therein that the power under Section 311 Cr.P.C. can be exercised at any stage of inquiry, trial or any other proceedings under the CrPC and such statutory provision must be read purposively to achieve the intent of the statute to aid in discovery of the truth.

11. Therefore, in the light of above discussion, it is observed that merely because the stage of the case is at defence evidence or that the prosecution had already taken many opportunity but not examining the witness, is by itself no ground to decline the application moved by the complainant through the prosecution under Section 311 Cr.P.C. to examine the Senior Scientific Officer, RFSL, Bhondsi Gurugram along with report dated 12.09.2018 (Annexure P-3).

12. Coming to the facts of the case, the petitioner, by way of the instant application (Annexure P-5) had sought the summoning and examination of Narender Kumar, Senior Scientific Officer, RFSL, Bhondsi Gurugram along with report dated 12.09.2018. The main contention of the petitioner is that this report being part of the challan under Section 173



Cr.P.C. had been tendered in evidence by learned Public Prosecutor as Exhibit PX on 22.07.2019, however, as per the knowledge of the petitioner, this report is not covered under Section 293 CrPC to be *per se* admissible and as such summoning and examination of the said Senior Scientific Officer was essential for the just decision of the case.

13. It will be apt to mention here that as per Section 293(4) Cr.P.C., reports of certain Government Scientific experts may be used as evidence in an inquiry or trial and such specified Government Scientific experts under Section 293(4) Cr.P.C. includes as under:-

“(4) This section applies to the following Government scientific experts, namely :-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) [the Chief Controller of Explosives;]

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

(g) [any other Government Scientific Expert specified, by notification, by the Central Government for this purpose.] ”

14. The bare perusal of this provision would reveal that the Senior Scientific Officer of Regional Forensic Science Laboratory is not the person as mentioned in the list of Experts specified under Section 293(4) Cr.P.C. This being the case, merely tendering the report as Exhibit PX by learned Public Prosecutor at the relevant stage, would not in any manner make the report admissible in evidence and for that purpose, summoning and examination of the Senior Scientific Officer is considered just and essential for the proper decision of the case. The accused would of course have the



opportunity to cross-examine such witness when being produced in Court. So far as the Notification dated 26.11.2024 referred to by learned State counsel is concerned, no doubt Senior Scientific Officers have now been included in the list of Section 329(4) BNSS [erstwhile Section 293(4) Cr.P.C.], but it is with effect from 26.11.2024 prospectively and this Notification nowhere mentions to operate retrospectively, as in the present case, the report pertains to the year 2018. Further, the report dated 12.09.2018, which the petitioner intends to prove in evidence after summoning the Senior Scientific Officer, RFSL Bhondsi is already a part of the challan submitted by the police under Section 173 Cr.P.C. and is well within the knowledge of the accused and no prejudice will be caused in any manner to the accused as he will get ample opportunity to cross-examine the said witness once examined in Court.

15. It is apparent from the above discussion that the learned trial Court while dismissing the application under Section 311 Cr.P.C. moved by the petitioner vide impugned order dated 09.01.2025 (Annexure P-7) has certainly lost sight of these material facts and dismissed the application primarily on the ground that it has been moved at a later stage being a delaying tactic and secondly on the ground that the report of FSL has already been tendered by learned Public Prosecutor, however, both these conditions are not found valid and just in the light of the legal proposition discussed hereinabove and thereby curtailing the right of the complainant to prove the report of the expert dated 12.09.2018 in accordance with law.



16. As a consequent, finding merit in the present petition, the same is hereby allowed and the impugned order dated 09.01.2025 (Annexure P-7) passed by learned Judicial Magistrate First Class, Faridabad in case titled as '*State v. Mukesh Pandey*' CHI-1840-2017, is hereby set aside. Resultantly, the application (Annexure P-5) moved by the petitioner under Section 311 Cr.P.C., seeking summoning and examination of Narender Kumar, Senior Scientific Officer, Bhondsi Gurugram as witness to prove the report dated 12.09.2018 (Annexure P-3) by appearing as prosecution witness stands allowed. Learned Trial Court is directed to summon the said witness in accordance with law and afford appropriate opportunity to the accused to cross-examine the said witness as well.

17. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

29.05.2025
Gyan/Sandal

(SANJIV BERRY)
JUDGE

- | | | |
|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |