Before Arun Kumar Tyagi, J.

VIJAY PAL—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER—*Respondents*

CRM-M No. 25761 of 2015

May 27, 2020

(A) ***Criminal Procedure Code, 1973—Ss.313(i)(a) and 482—Indian Penal Code, 1860—Ss.419, 420, 468 and 471 read with S.120B—Loan—Summoning order—Branch Manager summoned by Court to produce original documents allegedly executed by accused at time of taking loan by them photostat copies of which already produced by concerned Registry Clerk, Office of Sub-Registrar, Sonepat—Registry Clerk, Office of Sub-Registrar, Sonepat summoned to produce record of mortgage deeds which were allegedly got registered by accused in Office of Sub-Registrar—Held, power under Section 311 of Cr.P.C., 1973 can be exercised at any stage of case before passing of judgment and therefore, in very nature of things it is meant to be exercised even after closing of evidence of prosecution or accused—Therefore, summoning of witness proper.***

Held that, the power under Section 311 of the Cr.P.C. can be exercised at any stage of the case before passing of the judgment and is, therefore, in the very nature of things meant to be exercised even after closing of the evidence of the prosecution or the accused. For the purpose of exercise of the power under Part-II of Section 311 of the Cr.P.C. it will be wholly immaterial as to whether the evidence of the prosecution or the accused was closed by the prosecution or the accused or by the Court by its order and the mere fact that evidence of the prosecution or the accused was closed by Court order will not bar the Court from exercising its power under Section 311 Part-II of the Cr.P.C.

(Para 52)

(B) ***Criminal Procedure Code, 1973—S.294—No formal proof—Chief Judicial Magistrate, Sonepat duty bound to determine authenticity of documents—Directed to call upon accused at the time of production of original record by Branch Manager to admit or deny genuineness thereof with specific reference to their signatures/thumb impressions by recording their statements under section 313(i)(a) of***

the Cr.P.C., 1973 and in case of denial of genuineness thereof by accused, prosecution entitled to prove genuineness thereof by getting same compared with their standard signatures/thumb impressions from F.S.L.

Held that, in view of the facts and circumstances of the case, learned Chief Judicial Magistrate, Sonepat is duty bound and is now accordingly directed to call upon the accused at the time of production of the original record by PW1 M.K. Goyal to admit or deny the genuineness thereof with specific reference to their signatures/thumb impressions by recording their statements under Section 313(i)(a) of the Cr.P.C. and in case of denial of genuineness thereof by the accused, the prosecution will be entitled to prove the genuineness thereof by getting the same compared with their standard signatures/thumb impressions from F.S.L., Madhuban.

(Para 55)

Hemant Bassi, Advocate for Ajay K. Dahiya, Advocate, *for the petitioner.*

Arjun Singh Yadav, A.A.G, Haryana, for respondents No.1-State.

None for respondent No.2.

ARUN KUMAR TYAGI, J.

(1) The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for setting aside order dated 01.07.2015 passed by learned Chief Judicial Magistrate First Class, Sonepat in ***Criminal Case No.583/1 of 2007 titled State*** *versus* ***Vijay Pal and others*** arising out of FIR No.184 dated 24.07.2007 registered under Sections 419, 420, 468 and 471 read with Section 120-B of the Indian Penal Code, 1860 (for short 'the I.P.C.') at Police Station City Sonepat.

(2) Briefly stated the facts giving rise to filing of the petition are that M.K. Goyal, Branch Manager, State Bank of Patiala, Main Branch, Sonepat submitted written complaint alleging that accused-Vijay Pal Singh, who was owner of the premises taken on rent by the abovesaid bank, approached the above-said Branch for availing credit facilities for issuance of Kissan Credit Gold Card for agricultural purposes. The bank acceded to his request and granted him credit facility for amount of Rs.3,00,000/- on 20.06.2003. Accused-Vijay Pal Singh again approached the bank on several occasions for grant of credit facilities

to the following persons.

Sr No.	Name and addresses of the persons	Date of sanction	Sanctioned amount (Rs.)
1.	Vikram Pal s/o Ved Pal, Village Khewra	04.05.2005	3,00,000/-
2.	Ved Pal s/o Sajjan Pal, Village Khewra	03.05.2005	3,00,000/-
3.	Anand Pal s/o Vijay Pal Singh, Village Khewra	14.07.2005	3,00,000/-
4.	Amit Pal s/o Vijay Pal Singh, Village Khewra	14.07.2005	3,00,000/-
5.	Om Parkash s/o Kali Ram, Village Khewra	04.01.2006	5,00,000/-
6.	Ishwar Singh s/o Chander Singh, Village Khewra	17.01.2006	5,00,000/-
7.	Naresh Kumar s/o Murari Lal, Village Khewra	18.01.2006	5,00,000/-
8.	Sunil s/o Ved Pal, Village Khewra	18.01.2006	5,00,000/-
9.	Jai Kawar s/o Duli Chand, Village Khewra	01.03.2006	5,00,000/-
10.	Sultan s/o Bhagwana, Village Khewra	01.03.2006	5,00,000/-
11.	Prem Pal s/o Dhara Ram, Village Khewra	07.07.2006	5,00,000/-
12.	Parkashwati w/o Vijay Pal, Village Khewra	19.06.2003	3,00,000/-
13.	Randhir Singh s/o Nandu, Village Khewra	11.08.2004	3,00,000/-
14.	Chander Bhan s/o Bhagwana, Village Khewra	22.08.2003	3,00,000/-
15.	Vijay Pal Singh s/o Lachhman Singh,Village Khewra	20.06.2003	3,00,000/-

16.	Pinki d/o Vijay Pal Singh, Village Asawarpur (Khewara)	13.08.2003	2,00,000/-
17.	Krishan s/o Duli Chand, Village Khewra	23.02.2005	2,50,000/-
18.	Raj Lata d/o Vijay Pal Singh Antil, Village Khewra	14.08.2003	2,50,000/-

The abovesaid persons were either family members of accused-Vijay pal Singh or his relatives. The abovesaid loan amounts were sanctioned to them against registered mortgage of agricultural land. On default by the abovesaid persons in repayment of loan, the bank officials visited their village and came to know that no land existed in the name of the abovesaid persons and the jamabandies produced by them were fake. Consequent to registration of FIR on the basis of above-said complaint, the police investigated the case and filed charge-sheet against 11 persons namely Vijay Pal, Om Parkash, Vikram Pal, Randhir, Sultan, Jai Kuwar, Naresh, Krishan, Prem Pal, Ved Pal and Ishwar and found remaining 7 accused namely Parkaswati, Pinki, Rajlata, Anandpal, Amit Pal, Sunil Kumar and Chanderbhan to be innocent. Charges were framed and the evidence produced by the prosecution was recorded. On failure of the prosecution to produce its remaining evidence, evidence of the prosecution was closed by the Trial Court vide order dated 06.03.2014. Application under Section 311 of the Cr.P.C. was filed by the prosecution to examine Sachin Kumar Goyal and Indraj, Bank Managers which was dismissed by learned Chief Judicial Magistrate, Sonepat vide order dated 06.08.2014. After recording statements of the accused under Section 313 of the Cr.P.C., the case was adjourned for defence evidence. Defence evidence produced by the accused was recorded. The accused filed application under Section 311 of the Cr.P.C. for examining Indraj, Branch Manager as defence witness which was dismissed by learned Chief Judicial Magistrate, Sonepat vide order dated 20.11.2014.

(3) While the case was pending for defence evidence and arguments, learned Chief Judicial Magistrate, Sonepat observed that at the time of recording of his statement under Section 161 of the Cr.P.C., M.K. Goyal, Branch Manager, State Bank of Patiala, Main Branch, Sonepat had handed over photostat copies of the documents produced by the 18 accused persons to the bank at the time of availing loan and had undertaken that he will produce the original record in the Court at the time of his testimony. The testimony of complainant-M.K. Goyal

was recorded on 23.09.2013 but he did not produce original record in the Court. The Investigating Officer Satbir Singh (retired Inspector) tendered photostat copies of the documents during his testimony but admitted during his cross-examination that he had not seenthe original documents. Learned Chief Judicial Magistrate, Sonepat further observed that the accused persons had executed mortgage deed in favour of the complainant-Bank but the prosecution did not cite the concerned Registry Clerk of the office of Sub-Registrar, Sonepat as witness to prove the mortgage deeds. Learned Chief Judicial Magistrate, Sonepat considered re- examination of PW1 M.K. Goyal to be necessary to prove the original record of documents produced by the 18 accused and examination of the concerned Registry Clerk of the office of Sub-Registrar, Sonepat to be essential for just decision of the case. Learned Chief Judicial Magistrate, Sonepat accordingly ordered summoning of PW1 M.K. Goyal, Branch Manager for his re-examination to prove the original record of the documents produced by the accused persons to the bank at the time of availing loan and concerned Registry Clerk, office of Sub-Registrar, Sonepat for production of the record of mortgage deeds photostat copies of which were placed on record as Mark- H, Mark-M, Mark-Q, Mark-Y, Mark-A3, Mark-A-8 Mark-A12, Mark-A15, Mark-A20, Mark-A25 and Mark-A29.

(4) The petitioner has challenged order dated 01.07.2015 on the grounds that PW-1 M.K. Goyal was examined and re-examined comprehensively but nowhere it was mentioned that original documents were required by the prosecution. The Court had granted sufficient time to the prosecution to produce its evidence. Evidence of the prosecution was closed by the Court vide order dated 06.03.2014. Application filed by the prosecution under Section 311 of the Cr.P.C. for summoning of Sachin Kumar Goyal and Indraj, Bank Managers for their examination in the case was dismissed vide order dated 06.08.2014. Application filed by the petitioner for examination of Indraj, Bank Manager as defence witness was dismissed vide order dated 20.11.2014. The trial Court cannot review its order of closing the prosecution evidence and order of dismissing application under Section 311 of the Cr.P.C. filed by the prosecution. The trial Court has summoned new witness after a gap of 8 years when the matter is fixed for final arguments. The petitioner has suffered the agony of trial for 8 years. Re-examination of PW-1 M.K. Goyal and summoning of Registry Clerk will re-open the prosecution evidence and cause serious prejudice to the petitioner and will amount of filling up of lacuna in the

case of the prosecution. Learned Chief Judicial Magistrate, Sonepat has improperly exercised the powers under Section 311 of the Cr.P.C. and has also wrongly summoned documents pertaining to 7 accused persons who were not charge-sheeted by the police. The impugned order suffers from material illegality. Therefore, the impugned order may be set aside in exercise of inherent powers.

(5) Notice of the petition was given to the respondents. The petition has been contested by respondent No.1. However, none appeared for respondent No.2 despite due service.

(6) In its reply respondent No.1 has submitted that there is no illegality in passing of the impugned order dated 01.07.2015 by learned Chief Judicial Magistrate, Sonepat and PW-1 M.K. Goyal and the Registry Clerk of the office of Sub-Registrar, Sonepat have been rightly summoned. The petitioner did not file any revision petition against the impugned order before learned Sessions Judge, Sonepat before filing the present petition. Therefore, the petition may be dismissed.

(7) I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

(8) Learned Counsel for the petitioner has submitted that PW-1 M.K. Goyal was examined and cross-examined comprehensively without any insistence by the prosecution on production of original documents. The prosecution was given sufficient number of opportunities for producing its entire evidence and on its failure to do so, evidence of the prosecution was closed by trial Court vide order dated 06.03.2014. Application filed under Section 311 of the Cr.P.C. by the prosecution for summoning prosecution witnesses Sachin Kumar Goyal and Indraj, Bank Managers was also dismissed vide order dated 20.11.2014. Even the application filed by the petitioner under Section 311 of the Cr.P.C. for summoning Indraj, Bank Manager as defence witness was dismissed. The trial Court could not review its orders closing the prosecution evidence and dismissing application under Section 311 of the Cr.P.C. for summoning prosecution witnesses and could not exercise its power under Section 311 of the Cr.P.C. to fill up the lacuna in the case of the prosecution. The trial Court has ordered summoning of a new witness i.e. after a gap of 8 years when the matter is fixed for final arguments. The petitioner has already suffered the agony of trial for 8 years. Serious prejudice will be caused to the petitioner if PW-1 M.K. Goyal is recalled for re-examination and concerned Registry Clerk is summoned for production of record of mortgage deeds. Therefore, the impugned order being abuse of process

may be set aside for the ends of justice. In support of his arguments, learned Counsel for the petitioner has placed reliance on the observations in judgments of Hon'ble Supreme Court in ***Mahender Lal Dass*** *versus* ***State of Bihar***[1] and ***Mohd. Iqbal Ahmad*** *versus* ***State of Andhra Pradesh***[2] and judgments of this Court in ***Hari Singh*** *versus* ***State of Haryana***[3], ***CRR-2375-***2017 titled as ***Buta Singh*** *versus* ***State of Punjab and others*** decided on 12.07.2017 and CRM-M-30174-2011 titled as Dipika Lal versus State of Haryana and another decided on 22.02.2018.

(9) On the other hand learned State Counsel has argued that the Court has the power under Section 311 of the Cr.P.C. to recall witness already examined and summon person not cited as witness in case their examination is considered to be essential for just decision of the case. The trial Court considered re-examination of PW-1 M.K. Goyal to be necessary for production of the original record produced by the accused at the time of taking of loan and summoning of the concerned Registry Clerk for production of original record of the mortgage deeds to be essential for just decision of the case. Re-examination of PW-1 M.K. Goyal and examination of the concerned Registry Clerk being essential to just decision of the case can not be considered to fill up any lacuna. The impugned order does not amount to review of order closing the evidence of the prosecution and does not suffer from any illegality. Re-examination of PW-1 M.K. Goyal and examination of the concerned Registry Clerk will not cause any prejudice to the petitioner as the petitioner will be entitled to cross-examine the above said witnesses and to produce evidence in rebuttal. Therefore, the petition may be dismissed.

(10) In the present case 18 persons named in the complaint are alleged to have taken loan from the complainant bank against the execution of loan documents including registered mortgage deeds. On default by them in repayment of loan, the bank officials visited their village and came to know that no land existed in their name and the jamabandies produced by them were fake. The police charge-sheeted 11 persons and found 7 persons to be innocent. On failure of the prosecution to produce its entire evidence, evidence of the prosecution was closed by the Court vide order dated 06.03.2014. The prosecution

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[1] 2001(IV) RCR (Crl.) 589
[2] AIR 1979 SC 677
[3] 2002(2) RCR (Crl.) 316

subsequently filed application under Section 311 of the Cr.P.C. for summoning Sachin Kumar Goyal and Indraj, Bank Managers for their examination in the case which was dismissed by the Court vide order dated 06.08.2014. While the case was pending for defence evidence and arguments, the Court vide impugned order dated 01.07.2015 ordered summoning of PW-1 M.K. Goyal Branch Manager, State Bank of Patiala, Main Branch Sonepat now posted as Chief Manager, State Bank of Patiala, Head Office Patiala along with original record as well as attested copies thereof for his re-examination in order to prove the original record of the documents produced by the 18 accused persons at the time of availing of loan and the concerned Registry Clerk, Office of Sub-Registrar, Sonepat to bring the record of the mortgaged deeds photostat copy of which were placed on record as Mark-H, Mark-M, Mark-Q, Mark-Y, Mark-A3, Mark-A8, Mark- A12, Mark-A15, Mark-A20, Mark-A25 and Mark-A29.

(11) The impugned order is assailed on the grounds that the trial Court having closed the evidence of the prosecution after giving sufficient opportunities to it for production of the same could not review order dated 06.03.2014 closing evidence of the prosecution and order dated 06.08.2014 dismissing application of the prosecution filed under Section 311 of the Cr.P.C. for summoning Sachin Kumar Goyal and Indraj, Bank Managers and that the power under Section 311 of the Cr.P.C. could not be exercised by the Court to fill up the lacuna in the case of non-production of original documents which were not insisted for by the prosecution during comprehensive examination and cross examination of PW1 M. K. Goyal, concerned Branch Manager and PW-9 Satbir Singh, Investigating Officer of the case. Further the Court could not reopen the trial by summoning a new witness after 8 years of protracted trial agonizing the petitioner which will result in complete denial of his fundamental right to speedy trial guaranteed by the constitution. For determination of the objections raised, the relevant statutory provisions, scope of powers and duties and role of the Court in the context of fair trial and production of evidence by the prosecution and the accused, permissibility of closing of the evidence of the prosecution by the Court by its order and effect thereof on exercise by the Court of its power under Section 311 of the Cr.P.C. have to be considered.

(12) The Cr.P.C. embodies the procedure for **'Trial Before A Court Of Session'** in Chapter XVIII, **'Trial Of Warrant-Cases By Magistrates'** Part-A – '**Cases instituted on a police report'** and Part-

B – '**Cases institut- ed otherwise than on police report'** in Chapter XIX and **'Trial Of Sum- mons-Cases By Magistrates'** in Chapter XX and '**Summary Trials'** in Chapter XXI and the relevant provisions thereof may be noticed. Sections 225-237 of the Cr.P.C. lay down the procedure for trial before a Court of Session. Section 230 provides that if the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses. Section 231 (1) of the Cr.P.C. provides that on the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. Section 233 (1) of the Cr.P.C. provides that where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. Sections 238-243 of the Cr.P.C. enumerate the procedure for trial of warrant cases by Magistrates. Section 242 (1) of the Cr.P.C provides that if the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses. Section 242 (3) of the Cr.P.C provides that on the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. Section 243 of the Cr.P.C. provides that after closing of the prosecution evidence and recording of the statement of the accused under Section 313 of the Cr.P.C., the accused shall be called upon to enter upon his defence and produce his evidence. Sections-244-250 of the Cr.P.C. legislate the procedure to be followed for trial of cases instituted otherwise than on police report triable by Magistrates. Section 244 of the Cr.P.C. provides that when, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Section 247 of the Cr.P.C. provides that after closing of the prosecution evidence and recording of the statement of the accused under Section 313 of the Cr.P.C., the accused shall be called upon to enter upon his defence and produce his evidence. Sections 251-259 of the Cr.P.C. embody the procedure for trial of summons cases by Magistrates while Sections 260-264 adopt the same with some modifications for summary trial. Section 254 (1) of the Cr.P.C. which is common thereto provides that if the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to

hear the accused and take all such evidence as he produces in his defence. These statutory provisions require the Court to **take all such evidence** as may be **'produced'** by the prosecution and the accused.

(13) No doubt the statutory provisions referred to above require the Court to **take all such evidence** as may be **'produced'** by the prosecution or the accused, but the word **'produced'** cannot be given any restricted meaning so as to saddle the prosecution or the accused with the entire responsibility of producing the evidence and the word **'produced'** has to be construed to mean the bringing forward of the witnesses desired to be examined at the trial by the prosecution or the accused at own responsibility or through the process of the court. **(**see ***State of Orissa*** *versus* ***Sibcharan Singh***[4] ***and State*** *versus* ***Nandkishore***[5].

(14) By the statutory provisions contained in the above referred Chapters the Court is given discretionary power to issue summons to witnesses on application of the prosecution or the accused which may also be noticed. Section 230 of the Cr.P.C. provides that the judge may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing**.** Section 233 (3) of the Cr.P.C. provides that If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Section 242 (2) of the Cr.P.C. provides that the Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. Section 243 (2) of the Cr.P.C. provides that if the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. Section 244 (2) of the Cr.P.C. provides that the Magistrate may, on the

[4] AIR 1962 Orissa 157

[5] AIR 1967 Rajasthan 228

application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. Section 247 of the Cr.P.C. makes the provisions of Section 243 of the Cr.P.C. applicable to trial of warrant-cases instituted otherwise than on police report (referred to above) to enable the accused to seek assistance of the Court in securing presence of defence witnesses. Section 254(2) of the Cr.P.C. provides that the Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing. However, these provisions are characterised by use of the expression **'may'** and not **'shall'** which is suggestive of the inference as to the Court not being under any obligation to compel the presence of the prosecution witnesses or production of the documents or any other thing.

(15) In this context, the following questions arise for consideration:-

(i) If the prosecution or the accused applies for assistance of the Court in securing presence of their witnesses whose presence is essential for just decision of the case, can the court decline such assistance and insist that the prosecution or the accused must produce them on own responsibility?

(ii) If the Court issues process for summoning of the prosecution or defence witnesses but the concerned police officer/official or officer/official of any of the law enforcement agencies of the State fails to execute the process issued by the Court for securing presence of the witnesses, can the Court close the prosecution or defence evidence without initiating appropriate action against the defaulting officer/official, looking into reasons for non-compliance, taking requisite remedial steps, and making sincere efforts for ensuring compliance with its orders and due execution of the process issued by it?

(iii) If the summons issued by the Court for securing presence of the witnesses are duly served on them but the witnesses do not appear in compliance with the summons served on them, can the prosecution or the accused be said to be at fault for their non-appearance and can the Court close the prosecution or defence evidence, on the ground of failure of prosecution or defence to produce them, without taking action against the witnesses failing to appear in the Court without any lawful excuse and also securing their presence in the Court by issuing coercive process for their examination in the case?

(16) The statutory provisions which confer discretionary power on the Court to issue summons to witnesses on application of the prosecution or the accused impliedly empower the prosecution and the accused to make an application for issue of summons to their witnesses for their examination or production of documents or any other thing. Since there is no mandatory requirement of filing of written application, an oral prayer or a request by the prosecution in the report under Section 173(2) of the Cr.P.C. or at the time of framing of charges and by the accused at the time of recording of his statement under Section 313 of the Cr.P.C. or in any written statement filed by him can also be treated as an application for issuing summons to the witnesses.

(17) The Court has been given very wide powers for securing the presence of witnesses. In the first instance the Court is empowered to issue summons to the witnesses. Part-A of Chapter VI of the Cr.P.C., which deals with '**Process To Compel Appearance**' embodies the provisions for service of summons and the relevant provisions thereof may be noticed. Section 61 of the Cr.P.C. provides that every summons issued by a Court shall be in writing, in duplicate, signed by the presiding officer in such Court, or by such other officer as the High Court may, from time to time, by the rule, direct, and shall bear the seal of the Court. Section 62 (1) of the Cr.P.C. provides that every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant. Section 62 (2) of the Cr.P.C. provides that the summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Section 62 (3) of the Cr.P.C. provides that every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate. Section 63 of the Cr.P.C. provides for service of summons on corporate bodies and societies. Section 64 of the Cr.P.C. provides that where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall if so required by the serving officer sign a receipt therefor on the back of the other duplicate. Section 65 of the Cr.P.C. provides that If service cannot by the exercise of due diligence be effected as provided in Section 62, Section 63 or Section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house of homestead in which the person summoned ordinarily resides; and thereupon the Court, after

making such enquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper. Section 66 of the Cr.P.C. provides that where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section. Section 69 (1) of the Cr.P.C. enables the Court to send summons to witnesses by registered post by providing that the Court issuing a summons to a witness may in addition to and simultaneously with the issue of fresh summons direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain. Section 69 (2) of the Cr.P.C. provides that where an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received the court issuing the summons may declare that the summons has been duly served. This provision gives the Court a remedial power of issuing and sending the summons by registered post to the witnesses where summons issued are not served on the witnesses by the concerned police officer under Section 62 of the Cr.P.C. repeatedly.

(18) Part-A of Chapter VII of the Cr.P.C., which deals with **'Process To Compel The Production Of Things'**, makes provisions for issuance of summons to produce. Section 91 (1) of the Cr.P.C. empowers the Court to issue summons for production of documents or other thing by providing that whenever any Court considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Cr.P.C. by or before such Court, such Court may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons.

(19) In case the summons are duly served on the witnesses and they do not appear for their examination or production of documents or any other thing, the Court is not powerless. Section 87(b) of the Cr.P.C. authorises the Court to issue warrant of arrest against such defaulters by providing that the Court may, in any case in which it is empowered by the Cr.P.C. to issue a summons for the appearance of any person, issue,

after recording its reasons in writing, a warrant for his arrest if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure. Part-B of Chapter VI of the Cr.P.C. embodies the provisions for execution of warrants and the relevant provisions may also be noticed. Section 70 (1) of the Cr.P.C. provides that **e**very warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court. Section 70 (2) of the Cr.P.C. provides that every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed. Section 71 (1) of the Cr.P.C. provides that any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody. Section 72 (1) of the Cr.P.C. provides that a warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same. Sections 75 to 81 of the Cr.P.C. contain the procedure for execution of warrants of arrest.

(20) Section 174 of the I.P.C., which visits such non attendance in obedience to summons with penal consequences, provides that whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 175 0f the I.P.C. punishes omission to produce document or electronic record to public servant by person legally bound to produce it. Section 175 of the I.P.C. provides that whoever, being legally bound to produce or deliver up any

document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the document or electronic record is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. The offences punishable under Sections 174 and 175 of the I.P.C. are non-cognizable, bailable and non-compoundable. The offence punishable under Section 174 of the I.P.C. is triable by any Judicial Magistrate while the offence punishable under Section 175 of the I.P.C. is triable by the Court in which the offence is committed subject to the provisions of Chapter XXVI or if not committed in a Court, by any Judicial Magistrate. Section 195 (1) (a) of the Cr.P.C. bars the Court from taking cognizance of offences punishable under Sections 174 and 175 of the I.P.C. or of any abetment of, or attempt to commit such offence or of any criminal conspiracy to commit such offence except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In view of Section 195 (1) (a) of the Cr.P.C. complaint is required to be filed by the Court concerned before the Court of competent jurisdiction.

(21) As filing of such complaint may be cumbersome, Section 349 of the Cr.P.C. confers alternative power on the Court concerned to summarily try and punish person refusing to answer or produce document. Section 349 of the Cr.P.C. provides that if any witness or person called to produce a document or thing before a Criminal Court refuses to answer such question as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346. Section 350 of the Cr.P.C. confers alternative power on the Court concerned to summarily try and punish non-attendance by a witness in obedience to summons by providing that if any witness being

summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(22) For filing complaints against a public servant under Sections 174 and 175 of the I.P.C. or initiating action under Sections 349 and 350 of the Cr.P.C., no sanction is required for the reason that non-discharge of duty constituting the offence under the above said provisions cannot be said to be in discharge of duty.

(23) Under the provisions of the Cr.P.C. the concerned police Officer/official or officer/official of any of the law enforcement agencies of the State is duty bound under the directions of law contained therein to serve the summonses issued by the Court on the prosecution or defence witnesses and execute the bailable or non-bailable warrants of arrest issued against the witnesses in accordance with the provisions of the Cr.P.C.. Section 166 of the I.P.C. penalises disobedience by a public servant with any direction of the law with intent to cause injury to any person by providing that whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Illustration appended to Section 166 of the I.P.C. exemplifies the provision by stating that if A being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a court of justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z, A has committed the offence under section 166 of the I.P.C.. Any non-compliance by the concerned Police Officer/Official or officer/official of any of the law enforcement agencies of the State will be punishable under Section 166 of the I.P.C. The offence punishable under section 166 of the I.P.C. is non-cognizable, bailable non-compoundable and triable by Judicial Magistrate of the 1st class. Therefore, filing of the

complaint by the concerned Court before the Court of competent jurisdiction will be required. Since non-compliance with the direction of law regarding service of summons and execution of warrant by such officer/official cannot be said to be in discharge of duties, sanction for prosecution of the defaulting police officer will not be necessary. Such officer/official will also be liable to appropriate disciplinary action by the competent authorities and the Court concerned may also direct the competent authorities for taking of appropriate disciplinary action against the defaulting officer/official.

(24) Since Section 340 of the Cr.P.C. applies only to offences referred to in Section 195 (1) (b) of the Cr.P.C. i.e. offences punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, 463, 471, 475 and 476 of the I.P.C. or of any criminal conspiracy to commit, or attempt to commit or the abetment of such offences which appear to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, the Court is not required to hold any preliminary enquiry under Section 340 of the Cr.P.C. before filing of the complaint regarding offences punishable under Sections 166, 174 or 175 of the I.P.C.. In view of Section 200 First proviso, on filing of such complaint concerned Judicial Magistrate has to issue summons without examination of the complainant and his witnesses. In case of non-appearance of the accused in compliance to summons warrant of arrest can be issued against him under Section 87 of the Cr.P.C.. In case such accused absconds, he can be declared proclaimed person under Section 82 of the Cr.P.C. and his properties including salary can be attached and his properties can be sold as provided by Section 83 of the Cr.P.C. In such an eventuality, FIR will also be registered against him under Section 174-A of the I.P.C. and he will be liable to prosecution for such absconding.

(25) A bare reading of the statutory provisions referred to above shows that sufficient powers have been given to the Court to compel attendance of prosecution or defence witnesses before it for their examination or production of documents or any other thing and also to compel due service of summonses or execution of warrants of arrest issued by it for securing presence of the prosecution or defence witnesses by the concerned Police Officers/Officials or officers/officials of any of the law enforcement agencies of the State.

(26) It may be observed here that at present there are nagging

problems of the witnesses particularly the official/police witnesses not attending the Court and the Police Officers not obeying Court directions by not serving summons, executing warrants, producing documents, etc., which plague the Judicial system to such an extent that huge number of cases remain static without any progress. It is also common practice in our trial courts of fixing a large number of cases for evidence due to the uncertainty regarding attendance of the witnesses with the consequence that if the witnesses turn up in all such cases it will be impossible for the Court to record evidence of all of them and substantial number if not the majority will go back unexamined. Fixing of such large number of cases not only increases the work load of all concerned with issuance and execution of court process but also causes unnecessary and avoidable harassment to the witnesses who go back unexamined. The same also not only adversely affects the smooth functioning of the Court but also has the fall out of the Court feeling relieved from work pressure if the witnesses do not turn up. The Judge gets no time to scrutinize whether summonses/warrants of arrest were timely issued by the concerned Court Official and served/executed by the Police Officer concerned and where the summons/warrants of arrest are not received back or received unserved/unexecuted what are the reasons for the same and what corrective measures are required to be taken. This also has the undesirable effect of the Court becoming complacent to non-attendance of witnesses and non-execution of court process and getting involved in vicious circle of forced improper working which is commonly known as running three Courts at a time. At times the court becomes a silent spectator to the trial where the material witnesses, doctor and the investigating officer do not appear for reasons best known to them. The court goes on giving dates after dates lingering the case and considering itself to be helpless and later feeling disgusted due to non-appearance of the witnesses or non-execution of the court process closes the evidence of prosecution or the accused on the ground of the case being very old. Such default disposal by acquittal of accused for lack of evidence or exclusion of material defence evidence of the accused is mere termination of proceedings without there being any dispensation of justice to the conscience of the Court by adjudication of the question of guilt or innocence of the accused on merits. The Court is not helpless and can not abdicate its function by rendering and accepting itself to be subject to mercy of the recalcitrant witnesses or police officers. The legislature has already taken the remedial measures by enacting above referred statutory provisions conferring powers on the Court to compel

the appearance of witness and also execution of the coercive process. Now it is for the Courts to effectively exercise the powers conferred on them. Further, taking of action under the above referred statutory provisions is only part solution of the problems. The causes for the same have also to be analysed by the Court to find out the solutions for the same. Witnesses do not appear in the Courts due to fear of harassment as observed by Hon'ble Supreme Court in ***State of U.P.*** *versus* ***Shambhu Nath Singh***[6], wastage of their precious time due to adjournments, loss of gainful working hours, intimidation or illegal gratification by the accused, out of Court Settlement in non-compoundable cases etc.. It is the need of the hour that the Court adopt sound methods of court and case management including the method of verifying the presence of the witnesses for the date of hearing fixed and accommodating them by giving further dates if so required by communication with them through some nodal officer of the Court/office of the Public Prosecutor. Calling upon prosecution or the accused under Section 294 of the Cr.P.C. to admit or deny genuineness of documents may obviate the necessity of summoning witnesses to prove them in case of admission. Recording of evidence of formal character on affidavits under Section 296 of the Cr.P.C. may ease the burden. The Court has to take steps for protection of the witness in case of their intimidation by the accused, reimbursement of the expenses incurred by them in attending the Court and prosecution of the witnesses turning hostile for illegal gratification. The Court must prepare at the time of framing of charges schedule of dates for all stages in the criminal case in the similar manner as is to be done for civil suits under direction of Hon'ble Supreme Court in ***Ramrameshwari Devi*** *versus* ***Nirmala Devi***[7] avoid giving liberal adjournments, adopt method of 'Sessions Trial' and give block of dates for evidence as directed by Hon'ble Supreme Court in ***Thana Singh*** *versus* ***Central Bureau of Narcotic***[8] and examine the witnesses in attendance on consecutive dates and not to defer their cross examination for long period as directed by Hon'ble Supreme Court in ***Vinod Kumar*** *versus* ***State of Punjab***[9]. Issuance of Court process with short time for service and service/execution thereof with short time for appearance in the Court is also one of the reasons for return of process

[6] 2001(2) RCR (Crl.) 390
[7] (SC) 2011(3) R.C.R.(Civil) 932
[8] (2013) 2 SCC 590
[9] (SC)2015(1) R.C.R.(Crl.) 647

without service and non- attendance of the witnesses which needs to be taken care of by issuance of appropriate instructions for issuance and service/execution thereof in time. These are the illustrative and not the exhaustive measures which may be adopted by the Court.

(27) Questions which arise are whether the Court is under any duty to exercise the powers conferred on it; whether the Court is bound to receive all such evidence as may be produced by the prosecution or the accused and whether the Court can close evidence of the prosecution to prevent denial of fundamental right to speedy trial to the accused.

(28) In ***Maneka Gandhi*** *versus* ***Union of India***[10]**,** *Hon'ble Supreme Court held that* Article 21 of the Constitution confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with reasonable, fair and just procedure prescribed by law. In ***Hussainara Khatoon*** *versus* ***Home Secretary, State of Bi- har, Patna***[11] **,** Hon'ble Supreme Court held that procedure prescribed by law for depriving a person of his liberty cannot be said to be "reasonable fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person and speedy trial which means reasonably expeditious trial is an integral and essential part of the fundamental right of life and liberty enshrined in Article 21 of the Constitution of India. In ***Abdul Rehman Antulay and ors.*** *versus* ***R.S. Nayak and anr***[12]**,** Hon'ble Supreme Court while holding that speedy trial at all stages is part of right under Article 21 of the Constitution of India, observed that if there is violation of the right of speedy trial, instead of quashing the proceedings, a higher court can direct conclusion of proceedings in a fixed time.

(29) If Speedy trial is the Constitutional right of the accused, the victim of the offence at the hands of the accused also has the fundamental right to access of justice. In ***Imtiyaz Ahmad*** *versus* ***State of Uttar Pradesh and others***[13]**,** Hon'ble Supreme Court observed that a person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short-cuts and other fora where they feel that justice will be

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[10] AIR 1978 SC 597
[11] (1979) 3 SCR 169
[12] 1992(2) R.C.R.(Crl.) 634
[13] 2012(2) RCR (Crl.) 1

done quicker. In the long run, this also weakens the justice delivery system and poses a threat to Rule of Law.

(30) In ***State of Gujrat*** *versus* ***High Court of Gujrat***[14] , Hon'ble Supreme Court observed that a victim of crime cannot be a forgotten man in the criminal justice system. It is he who has suffered the most. Criminal justice would look hollow if justice is not done to the victim of the crime.

(31) In ***Zahira Habibullah Sheikh*** *versus* ***State of Gujarat***[15]**,** Hon'ble Supreme Court observed as under:-

> "34. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining

[14] (1998) 7 SCC 392
[15] (SC)2006(2) R.C.R.(Crl.) 448

the fair name and standing of the judges as impartial and independent adjudicators.

a. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

b. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must

> depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny".

(32) In ***Himanshu Singh Sabharwal*** *versus* ***State of M.P***[16], Hon'ble Supreme Court observed as under:-

> "3. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences."

(33) In the present the accused are alleged to have defrauded the complainant Bank which is now merged in nationalized Bank and in case of non-payment of the amount lent, the burden will be passed on to the tax payers. Therefore, apart from the fundamental right of the accused to speedy trial, competing fundamental right of the complainant to access of justice and even social as well as economic interests of the public/society at large are involved. It is thus obvious that the Court has to strike a delicate balance of competing interests of the accused, the victim and the public/society at large.

(34) In ***State of Mysore*** *versus* ***N.G. Narasimhegowda***[17] Division Bench of Mysore High Court while setting aside order closing prosecution evidence and acquitting accused emphasised the duty of the Court to issue coercive process for securing presence of the witnesses and observed that having once issued summons to secure attendance of witnesses, it was the duty of the Magistrate to have enquired into the cause of non-service or non-return of summons and to have taken over steps as were necessary in the circumstances of the case to secure the attendance of witnesses particularly when there was no material before him to show that there had been any remissness on the part of the prosecuting agency.

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[16] (SC) 2008(2) R.C.R. (Crl.) 267
[17] 1965 (2) Cri LJ 48

(35) In ***Kashi Nath Pandit*** *versus* ***Onkar Nath***[18]**,** the witness Dr. Maqbool, against whom warrant of arrest was issued in consequence of his non-appearance on an earlier date, sought cancellation of the warrant issued against him and undertook to present himself on the next date of hearing but did not appear on the next date of hearing on which the Judicial Magistrate closed the prosecution evidence. While setting aside the order closing the prosecution evidence Hon'ble Jammu and Kashmir High Court that if the witness subsequently did not turn up on the next date of hearing, it was not fault of the prosecution. There was an obligation cast on the Court to discharge its duty in enforcing his attendance and for that purpose to use all possible coercive methods. After all what is the responsibility of the prosecution towards the Court? It is to fur- nish particulars of the witnesses and seek the assistance for their production unless the Prosecution undertakes to produce witnesses on its own responsibility. For default committed by witnesses for no fault of the prosecution the prosecution cannot be saddled with the responsibility and indeed should not be allowed to suffer on that score. In such a situation it becomes the bounden duty of the Court to exercise all its powers for procuring the attendance of the witnesses. If cases are dismissed because of wilful default committed by witnesses then a situation may arise where the Court as well as the party will be at the complete mercy of the witnesses. This will undoubtedly defeat the very ends of justice. Where, however, the blame lies on the prosecution for the default committed by it then of course the Court will be justified in knocking out its case.

(36) In ***State of Gujarat*** *versus* ***Nagin Amara Vasava (Gujarat)***[19]**,** Hon'ble Gujarat High Court observed that on non appearance of witness in obedience to summons the Judicial Officer need not feel himself helpless, but he must see to it that the coercive machinery is availed of to secure the presence of a recalcitrant complainant or such witnesses. If this is not done, the Judicial Officer in charge of the matter would be failing in the discharge of his duties. The imparting of justice is always a matter of conscience and mere termination of a matter by itself means nothing. A trial Magistrate must indeed feel hurt by such a recalcitrant complainant and such witnesses, if they do not come forth to help the cause of justice and he must then make every permissible endeavour to see that a case is not frustrated or miscarried merely because those who have set the criminal law in

[18] 1975 Crl. Law Journal 1090
[19] 1982 Cri LJ 1880

motion later on change their minds and seek by their absence to get away from it.

(37) In ***Nathibai*** *versus* ***Bhura***[20]**,** Hon'ble Madhya Pradesh High Court held that it is the duty of the Court to issue process to compel the attendance of the witnesses and accordingly set aside acquittal of the accused on the ground of failure of the prosecution to produce evidence. In ***Virendra*** *versus* ***State of M.P***[21]**,** Hon'ble Madhya Pradesh High Court observed that if the witness does not turn up after service of summons, coercive method should be adopted against him and the case cannot be closed for want of his evidence. In ***State of M.P.*** *versus* ***Bandu***[22], Hon'ble Madhya Pradesh High Court held that closing of evidence without any effort to secure attendance of the witnesses is miscarriage of justice.

(38) In ***Har Chand Singh*** *versus* ***State of Punjab and others***[23]**,** Hon'ble Single Bench of this Court observed that closing of prosecution evidence without issuance of coercive process for ensuring presence of the prosecution witnesses was not justified. Similar view was taken by Hon'ble Single Bench of this Court in ***Baljinder Singh and others*** *versus* ***State of Haryana and another Criminal Revision No.1391 of 2012 (O&M) decided on 10.05.2012.***

(39) It may be observed here that the complainant, the Police Officer, the Prosecutor and the accused do not have any power/authority under the Cr.P.C. or any other enactment to grab a witness and drag him to the witness box for his examination in support of their case or production of the documents or other thing relied upon by them and are wholly dependent either on willingness of the witnesses to appear in the Court or assistance of the Court for securing their presence in the Court. Even where the witness to be examined is a police officer/official or government servant or employee of any agency or instrumentality of the State the Administrative Superior has no power/authority under the Cr.P.C. or under any other enactment to issue any coercive process or take any coercive action to compel his appearance before the Court and may, at best, initiate appropriate disciplinary action against him for his non appearance in the Court which may take sufficiently long time and may not have the immediate

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[20] 1991 M.P.L.J. 952
[21] 1994 (II) MPWN 251
[22] 1995 (II) MPWN 78
[23] 2011(2) RCR (Crl.) 693

effect of causing his appearance before the Court. Therefore, the complainant, the prosecution or the accused can not be saddled with the responsibility to produce their witnesses on own responsibility and the Court can not decline its assistance in securing presence of the Witnesses. In the administration of criminal justice a duty is also cast upon the court to arrive at the truth by all lawful means. If the prosecution or the accused by its/his negligence or otherwise fails to discharge its/his responsibility in producing witnesses, the court cannot absolve itself of its responsibility to summon and examine all witnesses whose evidence appears to it to be essential for just decision of the case. The Court has to exercise its powers to ensure that all material witnesses whose examination is essential to just decision of the case are brought before it and the question of guilt or innocence of the accused is decided on merits by discovering the truth. If the trial Court is under statutory duty to compel the attendance of prosecution and defence witnesses, the Court can not close the prosecution or defence evidence on the ground of failure of the prosecution or the accused to produce the same without making genuine and sincere efforts to secure the attendance of the prosecution or defence witnesses whose evidence is essential for just decision of the case. Even in such cases prosecution evidence can be closed where there is gross neglect, deliberate delay or remissness/misconduct frustrating the Court process on the part of the prosecution so that prolonged trial will amount to complete denial of fundamental right of speedy trial to the accused. Similarly, the defence evidence can be closed where there is deliberate delay to prolong the trial and assistance of the Court for summoning of defence witnesses can be declined only where the application for such assistance is made for the purpose of vexation or delay or for defeating the ends of justice.

(40) In view of the above discussion, the answers to the questions posed above may be summarised as under:-

(i) If the prosecution or the accused applies for assistance of the Court in securing presence of prosecution or defence witnesses, the court cannot generally decline such assistance and insist that the prosecution or the accused must produce the evidence on own responsibility. However, assistance of the Court for summoning of defence witnesses can be declined where the application for such assistance is made for the purpose of vexation or delay or for defeating the ends of justice.

(ii) If any police officer/official or any officer/official of any

of the law enforcement agencies of the State fails to execute the process issued by the Court for securing presence of the witnesses, the Court is duty bound to take appropriate action against the defaulting officer/official for ensuring requisite compliance with its order and due execution of the process issued by it and the Court cannot close the prosecution or defence evidence without initiating appropriate action against the defaulting officer/official, looking into reasons for non-compliance, taking requisite remedial steps, and making sincere efforts for ensuring compliance with its orders and due execution of the process issued by it.

(iii) If the court allows the application and issues process for securing presence of the witnesses but the witnesses fail to appear in compliance with process served on them, the Court is duty bound to take action against the witnesses failing to appear in the court without any lawful excuse and also to secure their presence in the Court by issuing coercive process for their examination in the case and cannot close the prosecution evidence on the ground of failure of prosecution or defence to produce them. The Court can close prosecution evidence where there is gross neglect, deliberate delay or remissness/misconduct frustrating the Court process on the part of the prosecution so that prolonged trial will amount to complete denial of fundamental right of speedy trial to the accused. The Court can close the defence evidence where there is deliberate delay to prolong the trial and decline assistance of the Court for summoning of defence witnesses where the application for such assistance is made for the purpose of vexation or delay or for defeating the ends of justice.

(41) In the present case learned Chief Judicial Magistrate, Sonepat closed the evidence of the prosecution vide order dated 06.03.2014 and dismissed application filed by the prosecution under Section 311 of the Cr.P.C. for summoning Sachin Kumar Goyal and Indraj, Bank Managers vide order dated 06.08.2014. It appears that in the present case the Court closed prosecution evidence due to lingering on of the case without making genuine and sincere efforts as referred to above to secure the attendance of the prosecution witnesses whose evidence was essential for just decision of the case. However, the prosecution did not file any revision petition against the above said

orders. It will not be appropriate for this Court at this stage to go into the question in the present case as the same may cause serious prejudice to other accused who are not party to the present petition and has to restrict itself to the challenge to impugned order dated 01.07.2015 passed by learned Chief Judicial Magistrate, Sonepat in exercise of powers under Section 311 of the Cr.P.C.. The questions which arise are whether the same amounts to review of above said orders which is not permissible and whether the Court is barred by the above-said orders from exercising the power under Section 311 of the Cr.P.C..

(42) Section 311 of the Cr.P.C. empowers the Court to summon mate- rial witness or examine person present and the same reads as under:-

> "Any court may, at any stage of any inquiry, trial or other proceedings 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 be essential to the just decision of the case."

(43) In ***Godrej Pacific Tech. Ltd.*** *versus* ***Computer Joint India Ltd***[24]**,** Hon'ble Supreme Court analyzed the provisions of Section 311 of the Cr.P.C. as under :-

> "7. The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls

[24] 2008 (4) SCC162 (SC)

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 it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

8. 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."

(44) In ***Mohanlal Shamji Soni*** *versus* ***Union of India and another***[25]**,** it was observed by the Hon'ble Supreme Court that the Court while exercising its power under section 311 of the Code of Criminal Procedure, 1973 shall not use such power for filling up the lacuna left by the prosecution.

(45) However, in ***Rajendra Prasad*** *versus* ***The Naracotic Cell***

[25] 1991(3) RCR (Crl.) 182

through its Officer-in-charge Delhi[26]**,** Hon'ble Supreme Court explained that 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. The observations made by Hon'ble Supreme Court are reproduced as under:-

> "7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the Court could not fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage `to err is human' is the recognition-of the possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting Of a case cannot be understood as the lacuna which a court cannot fill up.
>
> 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 trail of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No parry in a trial can before-closed 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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> 9. The very same decision Mohanlal Shamiji Soni v. Union

[26] 1999(3) RCR (Crl.) 440

of India, (supra) which cautioned against filling up lacuna has also laid down the ratio thus :

"It is therefore clear that the Criminal Court has ample power to summon any person as a witness or recall and re-examined 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."

(46) In ***Zahira Habibullah Sheikh*** *versus* ***State of Gujarat***[27]**,** Hon'ble Supreme Court observed as under:-

"27. .....The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge."

(47) In ***Rajaram Prasad Yadav*** *versus* ***State of Bihar and another***[28]**,** Hon'ble Supreme Court referred to the earlier decisions and in para No.23 of its judgment culled out certain principles which are to be kept in mind while exercising power under Section 311 Cr.P.C. which is reproduced as under:-

"23. From a conspectus consideration of the above decisions, while dealing with an application under Section

[27] (SC)2006(2) R.C.R.(Crl.) 448
[28] 2013(3) R.C.R. (Crl.) 726

311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is needed by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) 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.

d) The exercise of power under Section 311 Criminal Procedure Code 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.

e) 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.

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

g) 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.

h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to

pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, 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.

k) 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.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Criminal Procedure Code 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."

(48) In ***Mannan Sk. and others*** *versus* ***State of West Bengal and another***[29] it was held by Hon'ble Supreme Court that justice must not

[29] 2014(4) R.C.R.(Crl.) 617

be allowed to suffer because of the oversight of the prosecution and in that case witness was recalled for examination after 22 years and his examination was also held not to amount to filling of the lacuna.

(49) In the present case it was the duty of Satbir Singh, the investigating officer of the case to obtain the original documents during investigation. However, merely photostat copies of the documents including mortgage deeds were procured by Satbir Singh, the investigating officer of the case from M.K. Goyal, the concerned Branch Manager on undertaking by him that the original documents will be produced at the time of his examination in the Court. Despite undertaking given by M.K. Goyal, the concerned branch manager to Satbir Singh, the investigating officer of the case, the original documents produced were not produced by M.K. Goyal, the concerned branch manager at the time of his examination in the case probably due to his transfer. The photostat copies of the mortgage deeds were not admitted in evidence as exhibits and were merely marked as as Mark-H, Mark-M, Mark-Q, Mark-Y, Mark-A3, Mark-A8, Mark-A12, Mark-A15, Mark-A20, Mark-A25 and Mark-A29. It was the duty of the prosecutor to insist on production of the original documents at the time of examination of PW-1 M.K. Goyal, the concerned branch manager and PW-9 Satbir Singh, the investigating officer of the case, but the public prosecutor failed to do so. Since the mortgage deeds allegedly executed by the accused were registered in the office of the Sub Registrar, Sonepat, production of the relevant record by the concerned official from the office of the Sub Registrar, Sonepat was also necessary and for this purpose the Investigating Officer of the case was required to cite him as a witness for the prosecution in the list of prosecution witnesses. However, the Investigating Officer of the case failed to mention his name in the list of prosecution witnesses and the prosecutor did not notice or ignored this fact and did not take any steps to remedy the omission.

(50) In ***Dhanraj Singh @ Shera and Ors***. *versus* ***State of Punjab***[30]**,** Hon'ble Supreme Court observed as follows :-

> "5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is

[30] (JT 2004(3) SC 380)

designedly defective. ***(See Karnel Singh v. State of M.P., 1995(3) RCR(Criminal) 526 : (1995(5) SCC 518).***

6. In ***Paras Yadav and Ors. v. State of Bihar, 1999(1) RCR(Criminal) 627 : (1999(2) SCC 126)*** it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in ***Ram Bihari Yadav v. State of Bihar and Ors., 1998(2) RCR(Criminal) 403 : (1998(4) SCC 517)*** if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again re-iterated in ***Amar Singh v. Balwinder Singh and Ors., 2003(1) RCR (Criminal) 701 : (2003(2) SCC 518)***".

(51) In ***Himanshu Singh Sabharwal*** *versus* ***State of M.P***[31]**,** Hon'ble Supreme Court observed as under:-

"16. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court

[31] (SC) 2008(2) R.C.R.(Crl.) 267

> cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness."

(52) The Court can not play into the hands of the Investigating Officer or the Public Prosecutor. Recalling of PW-1 M.K. Goyal Branch Manager, State Bank of Patiala, Main Branch Sonepat now posted as Chief Manager, State Bank of Patiala, Head Office Patiala along with original record as well as attested copies for his re-examination in order to prove the original record of the documents produced by the 18 accused persons at the time of availing of loan and summoning of the concerned Registry Clerk of the Office of Sub-Registrar, Sonepat for production of the record of the mortgaged deeds photostat copy of which were placed on record as Mark-H, Mark-M, Mark-Q, Mark-Y, Mark-A3, Mark-A12, Mark-A15, Mark-A20, Mark-A25 and Mark-A29 is essential for just decision of the case and can not be said to amount to filling up of the lacuna. Under Part-II of Section 311 of the Cr.P.C., learned Chief Judicial Magistrate is under statutory duty to summon and examine or recall and re-examine witnesses if their evidence appears to him to be essential to the just decision of the case. The power under Section 311 of the Cr.P.C. can be exercised at any stage of the case before passing of the judgment and is, therefore, in the very nature of things meant to be exercised even after closing of the evidence of the prosecution or the accused. For the purpose of exercise of the power under Part-II of Section 311 of the Cr.P.C. it will be wholly immaterial as to whether the evidence of the prosecution or the accused was closed by the prosecution or the accused or by the Court by its order and the mere fact that evidence of the prosecution or the accused was closed by Court order will not bar the Court from exercising its power under Section 311 Part-II of the Cr.P.C. In this legal perspective, impugned order dated 01.07.2015 passed by learned Chief Judicial Magistrate, Sonepat under Section 311 of the Cr.P.C. cannot be said to be by way of review of the orders dated 06.03.2014 closing the prosecution evidence and order dated 06.08.2014 dismissing application filed by the prosecution under Section 311 of the Cr.P.C. for summoning Sachin Kumar Goyal and Indraj, Bank Managers and is not liable to be set aside on that ground. Learned Chief

Judicial Magistrate being under statutory obligation under Section 311 Part-II of the Cr.P.C. has rightly ordered to summon M.K. Goyal concerned Bank Manager and the Registry Clerk of the office of Sub-Registrar, Sonepat vide impugned order. In the facts and circumstances of the case the impugned order is also not liable to set aside on the ground that the same has been passed at the belated stage of the case reopening prosecution evidence after prolonged trial agonizing the accused for more than 8 years. No prejudice will be caused to the accused as PW1 M.K.Goyal has been summoned by the Court to produce the original documents allegedly executed by the accused at the time of taking of loan by them photostat copies of which have been already produced and the concerned Registry Clerk, Office of Sub-Registrar, Sonepat has been summoned to produce the record of mortgage deeds which were allegedly got registered by the accused in the Office of Sub-Registrar, Sonepat and no new case is to be made out by their examination. Further, the accused can cross examine the witnesses and produce defence evidence in rebuttal.

(53) In ***Mahender Lal Dass*** *versus* ***State of Bihar***[32]**,** Hon'ble Supreme Court quashed FIR under Sections 5(2) and 5(1) (e) of the Prevention of the Corruption Act, 1947 on the ground of denial of right of speedy trial due to pendency of the matter of grant of sanction with the Government for more than 13 years. In ***Mohd. Iqbal Ahmad*** *versus* ***State of Andhra Pradesh***[33]**,** Hon'ble Supreme Court set aside conviction under Section 161 of the I.P.C. and Sections 5(2) read with Section 5(1) (d) of the Prevention of the Corruption Act, 1947 on the ground of grant of sanction for prosecution being invalid due to non production of the note of the Commissioner while holding that no fresh evidence could be produced to fill the lacuna deliberately left by the prosecution. However, both the above mentioned cases did not involve any question regarding the nature, scope and extent of power under Section 311 of the Cr.P.C. and the observations therein, which did not make any reference thereto, are not applicable to the facts of present case. In ***Hari Singh*** *versus* ***State of Haryana***[34] order allowing examination of all prosecution witnesses passed on the application filed under Section 311 of the Cr.P.C. by third person after closing of evidence of the prosecution was set aside by this Court on the grounds of third person having no locus standi and review of order closing

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[32] 2001(4) RCR (Crl.) 589
[33] AIR 1979 SC 677
[34] 2002(2) RCR (Crl.) 316

prosecution evidence and filling of lacuna not being permissible. ***In CRR-2375-2017 titled as Buta Singh*** *versus* ***State of Punjab and others decided on 12.07.2017*** order dismissing application under Section 311 of the Cr.P.C *was* upheld on the grounds that the prosecution evidence had been rightly closed by the Court after grant of 32 effective opportunities and order closing prosecution evidence had not been challenged. *In* ***CRM-M-30174-2011 titled as Dipika Lal*** *versus* ***State of Haryana and another decided on 22.02.2018*** dismissal of application under Section 311 of the Cr.P.C. was upheld holding that power under Section 311 of the Cr.P.C. could not be exercised to review the order closing the prosecution evidence. Observations in the above said cases have to be treated as confined to the particular facts thereof and the same can not be regarded as precedents for the view that "the Court can not pass any order under Section 311 of Cr,P.C. as the same will amount to review of order closing prosecution evidence which is not permissible". Any such view is not in conformity with law enumerated by Hon'ble Supreme Court in the judgments referred to above. In view of the facts and circumstances of the present case which are quite evidently different and the settled position of law discussed above, observations in judgments relied upon by learned Counsel for the petitioner are not applicable and are not of any help to the petitioner.

(54) It follows from the above discussion that the impugned order does not suffer from any illegality or irregularity and not being abuse of process is not liable to be quashed in exercise of powers under Section 482 of the Cr.P.C. for ends of justice.

(55) It may be observed here that in the present case photostat copies of documents allegedly executed by the accused were attached with the report filed under Section 173(2) of the Cr.P.C.. It was mandatory for learned Chief Judicial Magistrate, Sonepat to call upon the accused at the commencement of the trial to admit or deny genuineness thereof in view of Section 294 of the Cr.P.C. which reads as under:-

> "**294. No formal proof of certain documents.-**
>
> (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved."

However, learned Chief Judicial Magistrate, Sonepat failed to do so. In view of the facts and circumstances of the case, learned Chief Judicial Magistrate, Sonepat is duty bound and is now accordingly directed to call upon the accused at the time of production of the original record by PW1 M.K. Goyal to admit or deny the genuineness thereof with specific reference to their signatures/thumb impressions by recording their statements under Section 313(i)(a) of the Cr.P.C. and in case of denial of genuineness thereof by the accused, the prosecution will be entitled to prove the genuineness thereof by getting the same compared with their standard signatures/thumb impressions from F.S.L., Madhuban.

(56) Accordingly, the present petition, being devoid of any merit, is hereby dismissed without any orders as to costs with the directions as mentioned above.

(57) A copy of this order be circulated to all the Judicial Officers in the States of Punjab and Haryana and U.T. Chandigarh for guidance and be also sent to Director (Academics), Chandigarh Judicial Academy for inclusion of the appropriate material with special focus on the topic of "Compelling of attendance of witnesses and execution of Court process" in training/refresher courses for judicial officers, after obtaining orders from Hon'ble the Chief Justice, if so required.

Shubreet Kaur