



APPLICATION OF SECTION 311 OF CRIMINAL PROCEDURE CODE, 1973 PERMISSIBILITY OF RECALL FOR WITNESS

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Abstract: The recall of witness for examination in the court on the plea that the defence counsel was not competent and has not effectively cross-examined the witness, more so after the statement of the accused has been recorded under section 313 of the criminal procedure code, 1974 arise in cases and has become an important issue in as refused. Such an issue has come up before the supreme court in a recent case.

The apex court stated that a reference to section 311 of the criminal procedure code as well as to section 138 of the Indian evidence Act is necessary for consideration of such a vital issue relating to recall of witness, for fail trail.

A. RESEARCH METHODOLOGY

1. Scope and objective of the study

The main objective of this research study is to understand the nature and importance of court of law. To know the important principles and legislation of CR.P.C and applicability of section 311. study related to section 311 of the code of CR.P.C confers a wide discretion on the court to act as the exigencies of justice require. we also study that section 311 enables and in certain circumstances, imposes on the court the duty of summoning witnesses who would not otherwise be brought before the court.

The scope of this research paper is to take a look at covers that any court may, at any phase of any request, trial or other continuing under this code, summon any individual as a witness.

look at any individual in participation, however not summoned as witness, or review and rethink any individual already inspected; and the court will summon and analyze or review and reevaluate any such individual if his evidence appears to it to be crucial for the only choice of the case, the provision peruses.

2. Research methodology

The adapted method used in the research paper is secondary data. The secondary data consist of information that already exist on various sites, journals and others. The paper is bases on secondary data which was collected from books, journals, statues, case laws, newspaper, official government reports and other published and unpublished materials as well as information available on the internet that is relevant or suitable in the context of the problem under this paper. This data has enabled me to provide a firm theoretical background to the study

3. Research Questions

Q1. What are the circumstances in which the court resumes its power under this section?

(Zahira Habibullah sheikh vs state of Gujrat)

Q2. What are the guidelines given by hon'ble supreme court under section 311 of CR.P.C?

Q3. Why court apply section 311 of CR.P.C during trail in any case?



B. HYPOTHESIS OF THE RESEARCH WORK

In this research paper it is hypothesised that section 311 of CR.P.C, court have discretionary power to act fair and give non biased and just decision for the parties.

We have different stages for different trial but court use this section for summoning, examination, recall and re-examine of witnesses who is present in the court, court have discretionary power to call any witness at any stage of inquiry, trial or any other proceeding, court uses this power for fair trial and to be just decision of the court.

The hon'ble supreme court has laid down following guidelines and governing principles to ensure that the court exercise its power smoothly without any interference u/s 311 of CR.P.C to summon, recall or re-examine any person as witness.

C. INTRODUCTION OF SECTION 311 OF CR.P.C

General provision as to inquiries and trial

“Any court may, at any stage of trial or other proceeding under this code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness or recall or 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 it be essential to the just decision of the case”.

A clear reading of sec 311 indicates that the powers of the courts are wide and they have been invested with power to re-examine. The object of the provision for recall, as opined by the supreme court “it is reserve the power with any court to prevent any injustice

in the conduct of any trial at any stage. The power available with the court to prevent injustice has to be exercised only. If the court for valid reason, feels that injustice is caused to a party. Such a finding with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situation when such a power can be exercised. Court also look whether the new evidence is needed and require for the just decision in the case.

The exercise of power under section 311 of the criminal procedure code should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts, which will lead to a just and correct decision of the case.

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, simultaneously section 311 imposes duty on the court to determine the truth and to render a just decision.

Q1. What are the circumstances in which the court resumes its power under this section?

Section 311 of CR.P.C are enacted where under any court by exercising its discretionary power at any stage of inquiry, trial or any other proceeding and can summon, examine, recall or re-examine any witness, who is present in the court or who is already examined for to be just decision of the court. So, in any circumstances for in the interest of justice court have power to re-trial and transfer cases.



✓ *Zahira Habibullah sheikh vs state of Gujrat {supreme court 2004}*

(This case is known as bakery based on re-trial)

Some party had set fire to the train in Godhra riots in which 56 people died, to revenge for the same another party had set fire to best bakery shop in which 14 people died, there was many eye witnesses but later they change their statement during trail stage, appellant Zahira Habibullah sheikh was also one of them but she did not changes her statement, Zahira is intimidated and threatened to change her statement but she did not reframe her statement and later she approaches to national human right commission for protection. State approach Gujrat high court but Gujrat high court acquit the application. Zahira request state of Gujrat to take additional evidence u/s 391 and for re-trial but Gujrat high court rejected that application too. Then Zahira with NGO approach supreme court to challenge such acquittal by Gujrat high court.

after the observation of the court supreme court allow additional evidence and give order for retrial and said this acquittal was a faulty trail and the evidence is tentative it and took on the ground of coercion so this acquittal is not justified. If the witness changes his statement on the basis of coercion, then its not a acquittal in the eyes of law.

Supreme court decided to re-trial but not in Gujrat, the re-trial should be in Maharashtra so that there should be no threat and coercion upon witness by any party or state which gives proper and fair investigation and take fair evidence.

Q2. What are the guidelines given by hon'ble supreme court under section 311 of CR.P.C?

- The exercise of the widest discretionary power u/s 311 and should ensure that the judgement should not be rendered, inconclusive, speculative presentation of the facts as thereby the ends of justice would be defeated.
- if the evidence of any witness spears 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.
- section 311 should be restored 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.
- The exercise of such power cannot be dubbed as filing in a lacuna in a prosecution case, unless the facts and circumstances of the 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.
- the wide judiciary power should be exercised judiciously and not arbitrarily.
- the court must satisfy itself that it was in every respect essential to examine such a witness or o recall him for further examination in order to arrive at a just decision of the case.
- The object of section 311 CR.P.C simultaneously imposes a duty on the court to determine the truth to render a just decision.



- The court arrive at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgement without it, but because there would be a failure of justice such evidence being considered.
- the additional evidence must not be received as a disguise or to change the nature of the case against any of the party.
- the power must be exercise keeping in mind that the evidence that is likely to be tendered, would be germane to the issue invoked and also ensure that an opportunity of rebuttal is given to the other party.
- The power u/s 311 of CR.P.C. must be invoked by the court only in order to meet the end of justice for strong and valid reason and the same must be exercised with care, caution and circumstances, the court should bear in mind that fair trial entails the interest of the accused, the victim and society and therefore, the great of fir and proper opportunity to the person concerned, must be ensured being a constitutional goal, as well as a human rights.

Q3. Why court apply section 311 of CR.P.C during trail in any case, can it be used for the rectification of mistake?

Court apply section 311 for fair play and good sense, should be safeguard, while exercising the discretion, the court should bear in mind that no party in a trail 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 manganous in permitting such mistake to be rectified.

According to section 311 of cr. p. c the convectional concept is that court should not to do so but in the case of

✓ ***Rajendra prasad vs narcotic cell delhi {July 1999}***

In this case there was 10 witness and one of them was eye witness who was essential element for particular case, during trail proceeding the prosecution council neither produces any document nor call the eye witness and when defense council was giving statement on that point of time prosecution council gives statement that he missed the important element of particular case and did not produce eye witness, court passed an order of such case but later, when court come to know that eye witness is essential De element for decision of the court for the first time court rectify its mistake.

Court held that section 311 applies for rectification of mistake court took this decision for in the interest of justice and fair trial.

D. CONCLUSION AND SUGGESTION

The constitutional right of an accused to be defended by a legal practitioner of his choice, does not always guarantee that the choice is the best. In view of this in all cases the accused may be asked to file mandatory an affidavit along with vakalat-nama that he is fully satisfied with the competence of his counsel and will not raise any plea of incompetence subsequently.

The need to five fair opportunities to the accused but also to ensure that the victim of the crime is not unduly harassed.

Recall power should not result in undue harassment to witness and to the victim.



Change of counsel cannot be a ground for recall.

The guidelines provided by the court in the form of guidelines in series of cases may be used for the exercise of wide discretionary power vested in the courts in the exercise of power to order recall or retrial od case.

Recalling of witness, prejudice will be caused, if not re-calling cannot be accepted. In other words, it must show us to how the prejudice will be caused or miscarriage of justice would take place otherwise.

The court must invariably keep in mind provision of section 311 of CR.P.C judiciously exercise the power, consistent with interest of justice, before a recall decision is taken.

The court must invariably keep in mind provision of sec 311 of the CR.P.C and section 138 of Evidence Act and judiciously exercise the power, consistent with of justice, before a recall decision in taken.

In the extreme case of hardship resulting out of incompetence of counsel, a rule may give which may be framed after the Bar council of India takes a decision on the basic of recommendation made by the Indian law commission. The exercise of framing a rule should be done expeditiously to balance the rights of the accused with the interest of justice.

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