IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP No. 3368 of 2026 in Cr. Appeal (C-DB) No. 43 of 2026

Reserved on: 9.9.2026

Decided on: 15.9.2026

Uploaded on: 15.9.2026

Kulwinder Singh. **…Appellant/Applicant.**

Versus

State of H.P. **…Respondent.**

Corum
Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Applicant. ***Mr. Virbahadur Verma and Mr.Aditya Singh Rathore, Advocates.***

For the Respondent: ***Mr.I.N. Mehta, Senior Additional Advocate General.***

Vivek Singh Thakur, Judge

This application has been preferred by respondent-State under Section 432 of Bharatiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') (old Section 391 of Cr.P.C.), for placing on record additional documents i.e. Matriculation Certificate of child victim and to re-examine/examine child victim and Principal/Superintendent of

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

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Government Senior Secondary School, Swahan/Open School registered from State or custodian of relevant record in order to prove and exhibit the additional documents proposed to be placed on record.

2. The main appeal has been preferred by appellant against even dated impugned judgment and order dated 19.12.2025 passed in Sessions Trial No. 13/7 of 2020 titled as State of H.P. Vs. Kulwinder Singh arising out of FIR No. 25/2020 dated 27.2.2020 registered at Police Station Kot-Kehloor, District Bilaspur, H.P. under Sections 354A, 354D, 376, 506 of the Indian Penal Code and Section of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), whereby appellant has been convicted for commission of offences under Sections 354A, 354D, 376, and 506 IPC and Section 4(2) of the POCSO Act and has been sentenced to undergo rigorous imprisonment for 20 years under Section 4(2) of the POCSO Act; to further undergo simple imprisonment of 6 months each under Sections 354A, 354D, and 506 IPC and also to pay a fine of ₹2,000/- under Section 354D IPC, and in default of payment of fine, to further undergo simple imprisonment for two months.

3. We have heard learned Senior Additional Advocate General for the applicant/State as well as learned counsel for non-applicant/appellant and have also gone through the material available on record.

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4. To prove age of victim, prosecution has examined PW-20 Sodhi Ram, Secretary, Gram Panchayat Bhakhra, Tehsil Naina Devi, District Bilaspur, H.P. by proving the Date of Birth certificate, Ex. P-1/PW-20, issued by him under the Registration of Births and Deaths Act, 1969, read with the Himachal Pradesh Registration of Births and Deaths Rules, 2003, as local Registrar Births and Deaths and Marriage registration Gram Panchayat Ghawandal, indicating date of birth of victim as 9.8.2004. PW-23 Neelam Kumar, Investigating Officer, has also proved on record copy of the Pariwar Register, Ex. P-4/PW-23, indicating the date of birth of the victim as 9.8.2004.

5. Learned Senior Additional Advocate General has submitted that during the course of preparation of final arguments, it transpired that prosecution had not produced the date of birth of victim from the school record, whereas at the time of incident, victim had passed matriculation examination and thus her Matriculation Certificate was available which was and is required to be proved her date of birth under Section 94 of the Juvenile Justice Act, 2015, as applicable to the present case. Further that it appears that either for ignorance or mistake committed by Investigating Officer, Matriculation Certificate of victim was not taken into possession and/or produced in evidence during the Trial, whereas the said certificate was and is necessary to adjudicate the issue of age of victim and thus was

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and is required to be proved on record to indicate her date of birth recorded in the school record/Matriculation Certificate.

6. In response learned Senior Additional Advocate General has submitted that State intends to prove age of victim by producing Matriculation Certificate and School record by reexamining PW-1 victim and examining Record Keeper/Office Superintendent/Principal of the concerned School, by production of Matriculation Certificate of victim alongwith School record related thereto.

7. It has been submitted by learned Senior Additional Advocate General that it is not a case where the prosecution has not led any evidence regarding the date of birth of victim during trial, but efforts were made as per prudence or knowledge of the Investigating Officer to lead/produce evidence of date of birth of the victim by placing on record Ex. P-1/PW-20 and Ex. P-4/PW-23 and thus, it is not a case of 'no evidence' led by the prosecution, but it is an inadvertent mistake, and, therefore, in the interest of justice as well as to protect the interest of minor victim and also to act in accordance with the essence of the POCSO Act, the application deserves to be allowed.

8. It has been further submitted on behalf of State that non-production of Matriculation Certificate was an inadvertent mistake which was neither intentional nor deliberate and was beyond the control of the

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victim, for whose protection and safeguarding the interest present criminal proceedings were initiated.

9. It has been further submitted that no new fact is proposed to be brought on record, but the evidence, necessary to substantiate the already claimed and proved fact on record, has been proposed to be produced on record in evidence by examining the victim and Record Keeper/Office Superintendent/Principal of concerned School.

10. It has been submitted by learned Senior Additional Advocate General that for doing substantial justice and to arrive at just decision, evidence, proposed to be proved on record, is necessary and no prejudice is going to be caused to the non-applicant/appellant, as he will have opportunity to cross-examine the witness on the issue on which evidence is being proposed to be led as additional evidence and also for the fact that no new case is being set up by the prosecution by leading any evidence on the fact which has not been disclosed, set up or relied upon by the State during the trial.

11. It has also been submitted that in similar circumstances in another case, an application Cr.MP No. 3682 of 2024 in Cr. Appeal No. 233 of 2022, was allowed and prosecution was permitted to lead evidence at appellate stage under Sections 311 and 391 of the Code of Criminal Procedure for just decision and to meet the ends of justice.

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12. It has also been submitted in the application that in similar circumstances an application Cr.MP No. 5315 of 2025 in Cr. Appeal No. 225 of 2021, was allowed and prosecution was permitted to lead evidence at appellate stage under Sections 311 and 391 of the Code of Criminal Procedure for just decision and to meet the ends of justice.

13. For opposing the prayer made in the application, detailed reply has been filed on behalf of non-applicant/appellant, taking numerous objections, including that the application is not maintainable, as this stage.

14. Learned counsel for non-applicant/appellant submits that as the prosecution has failed to place on record and prove the date of birth of victim by not producing Matriculation Certificate during the trial, but has relied upon only Birth Certificate issued under the Registration of Births and Deaths Act as well as Pariwar Register, which can only be considered in case there is no Matriculation Certificate or school record of date of birth is available, now at the appellate stage, respondent-State cannot be allowed to lead additional evidence to prove the date of birth of victim by placing on record copy of Matriculation Certificate as additional evidence and thus neither respondent-State can be allowed to produce the Matriculation Certificate, nor there is any necessity of examining/re-examining the victim or summoning the witnesses to that effect, as proposed. Therefore, it has been prayed that the application deserves to be dismissed.

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15. It has been contended on behalf of learned counsel for the applicant that power under Section 391 of Cr.P.C. now Section 432 of BNSS, is not to be exercised in a routine or casual manner, as a disguise for a re-trial or to fill up gaps lacunas and serious omissions caused by the negligence or laches or undue delay on the part of prosecution during original trial.

16. Learned counsel for the non-applicant/appellant, to oppose the prayer made in the application, has placed reliance upon judgments of the Apex Court in ***Swapan Kumar Chatterjee Vs. Central Bureau of Investigation, (2019) 14 SCC 328***, wherein it has been observed by the Apex Court that where prosecution evidence has been closed long back and reasons for non-examination of witness earlier are not satisfactory re-summoning of witness at belated stage would cause grave prejudice to accused and should not be allowed.

17. Learned counsel for non-applicant/appellant has referred judgment of this High Court in ***Jagdeep Kumar Vs. Himachal Pradesh State Cooperative Bank Limited, 2019 (3) SLC 1354***, wherein it has been observed that Section 391 of Cr.P.C. (now Section 432 of BNSS) is not intended to remedy the negligence or laches of the party.

18. It has also been contended by learned counsel for the non-applicant/appellant that facts and circumstances for allowing the application for additional evidence in Cr. Appeal No. 233 of 2022 and Cr. Appeal No.

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225 of 2021 were totally different in comparison to facts and circumstances of the present case and thus order passed in the same is not applicable to present case.

19. Referring the provisions of Sections 348 and 432 of the BNSS, learned Senior Additional Advocate General has justified filing of the application at this stage with submission that even in absence of this application, Court has power to call for additional evidence which is considered to be necessary for ends of justice, and to justify the necessity of additional evidence, he has re-iterated the averments made in the application and submissions made in support thereof referred supra.

20. For determining the issue involved in present application, it would be relevant to refer provisions of Section 348 and 432 of BNSS (Section 311 and 391 of Cr.P.C.), which read as under:-

> "348. **Power to summon material witness, or examine person present.**-Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.
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> [**Old Corresponding Section** : Sc. 311 of the Code of Criminal Procedure, 1973.]
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> 432. **Appellate Court may take further evidence or direct it to be taken**.---(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary,

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shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his advocate shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIV, as if it were an inquiry."

21. Perusal of order dated 20.9.2024 passed in Cr.MP No. 3682 of 2024, depicts that the issue involved in the said application was almost similar to the issue involved in present matter. The following paras of the said order are also relevant to be referred in present matter:-

"7. It is settled law that Section 311 Cr. P.C. confers a very wide power on the Courts to summon any person as a witness at any stage of any inquiry, trial or other proceeding and examine or recall and reexamine any such person, if his evidence appears to be essential to the just decision of the case.

8. The scope of Section 311 of the Cr.PC has been considered by the Hon'ble Supreme Court inter alia in Natasha Singh Vs. Central Bureau of Investigation, (2013) 5 SCC 741, wherein the Court, after reference to earlier authorities, stated the principle in the following terms:

"8. Section 311 Cr. P.C. empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under the Cr.P.C., or to summon any person

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as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, the Cr.P.C. has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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15…….. The power conferred under Section 311 Cr. P.C. 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 great caution and circumspection. The very use of words such as ‘any Court’, ‘at any stage”, or ‘or any enquiry, trial or other proceedings’, ‘any person’ and ‘any such person’ clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.”

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9. In ***Varsha Garg Vs. State of Madhya Pradesh, AIR 2022 SC 3707***, it has been held as under:-

> "25 Further, the Court while relying upon the earlier decisions in *J.K. International v. State (Govt. of NCT of Delhi)14, Zahira Habibulla H. Sheikh v. State of Gujarat15, Manu Sharma v. State (NCT of Delhi)16, Mohanlal Shamji Soni v. Union of India, Rajendra Prasad v. Narcotic Cell,* noted:
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> > "31 …a criminal court cannot remain a silent spectator. It has got a participatory role to play and having been invested with enormous powers under Section 311 CrPC, as well as Section 165 of the Evidence Act, a trial court in a situation like the present one where it was brought to the notice of the court that a flagrant contradiction in the evidence of PW 18 who was a statutory authority and in whose presence the test identification parade was held, who is also a Judicial Magistrate, ought to have risen to the occasion in public interest and remedied the situation by invoking Section 311 Cr.PC, by recalling the said witness with further direction to (2001) 3 SCC 462 (2004) 4 SCC 158 (2010) 6 SCC 1 (1991) Supp (1) SCC 271 (1999) 6 SCC 110 the Public Prosecutor for putting across the appropriate question or court question to the said witness and thereby set right the glaring error accordingly. It is unfortunate to state that the trial court miserably failed to come alive to the realities as to the nature of evidence that was being recorded and

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miserably failed in its duty to note the serious flaw and error in the recording of evidence of PW 18."

10. In S***wapan Kumar Chatterjee Vs. Central Bureau of Investigation, (2019) 14 SCC 328***, which has been relied upon by the learned counsel for the non-applicant/appellant, it has been held as under:-

"11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

11. Our own High Court in Sonu Vs. State of Himachal Pradesh, 2020 (1) Shim. LC 567 has held as under:-

"12. ….. The legal principles culled out on the basis of the law so discussed reads as follow:

i) Lacuna in the prosecution case must be understood as the inherent weakness or latent wedge in the matrix thereof.

ii) the advantage of a lacuna in the prosecution case normally go in favour of the accused but an oversight during the

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course of trial cannot be treated as irreparable lacuna.

iii) the function of the criminal courts is administration of criminal justice and not to count errors committed by the parties during the course of trial. The object of 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 piece of evidence on record or leaving ambiguity in the statements of witnesses examined by either side.

iv) The determinative factor is as to whether it is essential to re-examine a witness for the just decision of the case.

v) The only object underlying Section 311 of the code is to bring on record the evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society.

vi) The nature, scope and object of Section 311 of the Code dealing with the principles for exercise of discretionary power is that the power under Section 311 of the Code though is vast one and can be exercised at any stage of the trial. However, should be exercised only in those cases where the evidence to be tendered by the witness on re-call is germane to the issue involved. In case such evidence could not be adduced or brought on record due to an

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inadvertence, the power is not limited to re-call a witness for further cross-examination with reference to his previous statement but also to take additional evidence for any reasons at a just decision

vii) This discovery of truth is essential principles of any trial or inquiry to render a just decision after discovering all relevant facts.

viii) Of course power must be exercised judiciously and not capriciously or arbitrarily as any improper or capricious power may lead to undesirable results.

ix) The additional evidence must not be received as a disguise for retrial or to change the nature of the case against either of the parties.

x) The opportunity to cross-examine the witness qua the additional evidence recorded on re-examination and to produce rebuttal evidence, if any, should be given to the other party.

xi) The very use of words such as “any Court”, “at any stage”,or “or any inquiry, trial or other proceedings”, “any person” and“any such person” clearly spells out that the provisions of Section 311 of the Code have to be exercised in the widest possible terms and do not limit the discretion of the Court in any way. Fair trial entails the interest of the accused, the victim and of the society,

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therefore, fair trial includes the grant of fair and proper opportunities to the parties. Where the offence is against society, it is the unfortunate victim, who is the actual sufferer,hence it is imperative for the prosecution to ensure that no stone is left unturned to bring guilt home to the accused.

xii) That the power under Section 311 of the Code must be exercised with caution and circumspection and only for strong and valid reason as recall of a witness already examined is not an opportunity as a matter of course and discretion given to the court in his regard has to be exercised judicially to prevent failure of justice.

xiii) that delay in filing the application for re-calling a witness is one of the important factor and the same should be explained in the application."

12. Thus 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

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and trials under the Code and in this section, the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code".

22. In this regard pronouncement of the Apex Court in ***Rajeshwar Prasad Misra Vs. The State of West Bengal and Another, AIR 1965 SC 1887***, are relevant, which are as under:-

"9. Additional evidence may be necessary for a variety of reasons which it is hardly necessary (even if it was possible) to list here. We do not propose to do what the Legislative has refrained from doing, namely, to control discretion of the appellate Court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It mus, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise. Commentaries upon the Code are full of cases in which the powers under S. 428 were exercised. We were cited a fair number at the hearing. Some of the decisions suffer from the sin of generalization and some others from that of arguing from analogy. The facts in the cited cases are so different that it would be futile to embark upon their examination. We might have attempted this, if we could see some useful purpose but we see none. We would be right in assuming the existence of a discriminatory power in the High Court and all that we

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consider necessary is to see whether the discretion was properly exercised."

23. Following paras of judgment of the Apex Court passed in ***Rambhau and others Vs. State of Maharashtra, (2001) 4 SCC 759*** are also relevant:-

> "2. A word of caution however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against the accused. This Court in the case of Rajeswar Prasad Misra v. State of W.B AIR 1965 SC 1987 in no uncertain terms observed that the order must not ordinarily be made if the prosecution has 52 had a fair opportunity and has not availed of it. This Court was candid enough to record however, that it is the concept of justice which ought to prevail and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard.
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> 3. Be it noted that no set of principles can be set forth for such an exercise of power under Section 391, since the same is dependent upon the fact-situation of the matter and having due regard to the concept of fair play and justice, well being of the society.
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> 4. Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to sub-serve the ends of justice. Needless to record that on an analysis of the

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Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the Civil Procedure Code.

5. ….. ….. …..

6. Before going into the factual score further, it is convenient to note at this juncture that during the course of hearing of this appeal, the High Court thought it fit to conduct an additional examination of both the accused persons with a reasoning as below: “We have examined them to rectify the irregularity as cropped up and pointed out by the defence.” The word “irregularity” in common English parlance means and implies contrary to rule. This Court in the case of Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529 while explaining the meaning of irregularity observed:

> “A point was, however, made that Section 131 (2)(b) apply only to a cancellation on the ground of irregularity, that is a procedural defect such as, absence of notice, omission to give a hearing etc., There is, however, no reason to restrict the ordinary meaning of the word irregularity and confine it to procedural defects only. None has been advanced. Such a contention was rejected and we think rightly in Corpn. of Calcutta V. Chandoolan Bhai Chand Modi, AIR 1953 Cal 773. That word clearly covers any case where a thing has not been done in the manner laid down by the statute, irrespective of what that manner might be.”

Black’s Law Dictionary defines the word as “not according to rule and not regular” i.e. which stands contrary to rule. As noticed above, the purpose of introduction of Section 391 (earlier Section 428) in the statute-book has been for the purpose of making it available to the court nor to fill up any gap in the prosecution case but to oversee that the concept of justice does not suffer. The High Court itself records “to rectify the irregularity”, the issue therefore, is

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whether this rectification by an additional evidence is a mere irregularity or goes to the root of the issue and instead of sub-serving the ends of justice, the same runs counter to the concept of justice."

24. In ***Ashok Tshering Bhutia Vs. State of Sikkim, (2011) 4 SCC 402***, the Apex Court has held as under:-

"28. Additional evidence at appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the facts and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity.

29. The primary object of the provisions of Section 391 Cr.P.C. is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances essential to elucidation of truth. Generally, it should be invoked when formal proof for the prosecution is necessary. [Vide *Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887; Ratilal Bhanji Mithani v. The State of Maharashtra, (1971) 1 SCC 523; Rambhau v. State of Maharashtra, (2001) 4 SCC 759; Anil Sharma v. State of Jharkhand, (2004) 5 SCC 679; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158; and Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1).*

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30. This Court in *State of Gujarat v. Mohanlal Jitamalji Porwal, (1987) 2 SCC 364*, dealing with the issue held as under: (SCC pp. 370-71, para 5)

> "...To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

31. In Rambhau (supra), a larger Bench of this Court held as under: (SCC p. 762, para 4)

> "Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the

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powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to *Order 41, Rule 27 of the Civil Procedure Code.*" (emphasis added)

32. In view of the above, the law on the point can be summarised to the effect that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents etc. just to meet the ends of justice. However, the provisions of Section 391 Cr.P.C. cannot be pressed into service in order to fill up lacunae in the prosecution's case."

25. Observations made by the Apex Court in ***V.N. Patil Vs. K. Niranjan Kumar and others, (2021) 3 SCC 661***, are also relevant to be referred which read as under:-

"7. Learned counsel for the respondents made various submissions in questioning the application filed under Section 173(5) read with Section 311 Cr.PC when the trial reached the stage of hearing and contended that the witnesses cited to be summoned for the purpose of examining them on behalf of the prosecution, are neither the witnesses examined by the investigating officer during the course of his investigation, nor cited as the prosecution witnesses in the final report……..

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> 14. The object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 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 the discretionary power conferred under Section 311 Cr.P.C has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion."
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> xxx xxx xxx
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> 17. The aim of every Court is to discover the truth. Section 311 Cr.P.C is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 Cr.P.C has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice."

26. In present case by leading proposed evidence, no prejudice is going to be caused to the accused as it would not amount to have been received as a disguise for re-trial or to change the nature of the case against him, because from very beginning the case of the prosecution is that date of birth of the victim is 9.8.2004 and to substantiate the same, State has already proved on record documents Parivar Register Ex. P-4/PW-23 and date of birth certificate Ex. P-1/PW-20. Though Investigating Officer/prosecution could have obtained record related to date

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of birth from the School concerned, but for negligence of the Investigating Officer or ignorance about the provisions of Section 94 of the J.J. Act, 2015, no such record was procured and produced in the Court, however, such negligence or ignorance on the part of Investigating Agency cannot be a ground to deny leading of additional evidence, which is not going to be establish or substantiate any new fact other than the case already propounded by the prosecution against non-applicant/appellant.

27. It is also apt to record that non-applicant/appellant shall have right to cross-examine the witness on the issue of date of birth and fact related to date of birth sought to be re-asserted by prosecution by placing on record additional evidence in conformity of requirement of law, especially in view of the pronouncements of the Supreme Court. Application has been filed to produce on record additional evidence to rectify the irregularity for subserving the ends of justice which does not run counter to the concept of justice. It is not a defect incurable in nature, but is a mere irregularity which, in our considered opinion, required to be cured in the ends of justice.

28. Investigating Officer committed irregularity by not collecting date of birth record from the concerned School, resultantly Record Keeper/Office Superintendent/Incharge of the School record was not cited as a witness by the prosecution in charge sheet. However, Investigating Agency had collected other evidence with respect to date of birth of the

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victim from the concerned Panchyat, Registrar Births and Deaths, but in view of interpretation by the Court of the provisions of J.J. Act, the evidence collected by the Investigating Officer with respect to date of birth of the victim may not be sufficient to substantiate the date of birth of the victim as the same may not be taken in consideration on technical ground, whereas for the ends of justice and to arrive at just decision of the case, it would be essential to ascertain age of the child victim by allowing the State to produce on record Matriculation Certificate/School record to prove the date of birth in consonance with the pronouncements of the Court with respect to provisions of Section 94 of J.J. Act, 2015.

29. Courts are not precluded from, rather have been empowered to summon any person as a witness, examine, re-call or reexamine any person already examined and to permit leading of additional evidence to arrive at just decision of the case.

30. It is duty of the Court whenever it is possible without causing any prejudice to the opposite party to ensure production of necessary and essential evidence to ascertain the truth to arrive at just decision for the ends of justice.

31. For the discussion herein before, we are of the opinion that judgments referred supra by learned counsel for non-applicant/appellant are of no help.

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32. In the given facts and circumstances of the case we are of the considered opinion that it is essential and necessary to allow the additional evidence/re-call PW-1 and Incharge of record/Record Keeper/ Superintendent/Principal of the concerned school/Board for re-examination/examination for limited purpose of producing Matriculation Certificate/relevant record in evidence and proving date of birth of the victim in accordance with law.

33. Accordingly, State/prosecution is permitted to re-examine PW-1 victim and examine record keeper/Office Superintendent/Incharge of the record/Principal of concerned School alongwith necessary record to prove on record Matriculation Certificate in evidence as well as record of date of birth of the victim and these witnesses are directed to be summoned alongwith entire relevant record for recording their statement with respect to the Matriculation Certificate and date of birth record of the victim in School record.

34. While hearing various Criminal Appeals and Revisions, it had been noticed in large number of cases that for lapse in investigation, especially with respect to collecting evidence related to age proof of child in conflict with law as well as minor victim, the prosecution cases fail. Therefore, before parting, in order to avoid similar lapse in investigation, Director General of Police, Himachal Pradesh is directed to circulate provisions of Section 94 of the Juvenile Justice (Care and Protection of

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Children) Act, 2015 alongwith necessary guidelines/ instructions to all Investigating Officers in Himachal Pradesh, directing them that for collecting evidence with respect to age proof of child in conflict with law as well as minor victim, not only strictly adhere to mandate of Section 94 of the J.J. Act by collecting preferential evidence, but also to collect all available evidence regarding proof of date of birth by obtaining date of birth certificate from the school, Matriculation or equivalent certificate from the concerned examination Board/School, birth certificate issued by Corporation or Municipal Authority or Panchayat as the case may be and also other corroborating supporting documents indicating the same date of birth and in absence of any documents or doubtful documents, to resort to option of ossification test or any other latest age determining test by taking orders of the Committee or the Board/Court if required.

35. The Investigating Officer also be directed to make a effort to cite all those persons in the list of witnesses, who are necessary to be examined to prove the contents of such documents as well as those who are author of entry, legal custodian of the record, documents and/or certificate issuing official/author and also witnesses in whose presence such documents are obtained/taken in possession.

36. Investigating Officers also be directed to make an endavour to prove date of birth by all means to avoid any adverse impact on the prosecution case due to different interpretation and explanation rendered

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by the Court regarding nature of document relied upon for proving the date of birth and mode of proof of such document. Necessary instructions be issued at the earliest, latest by ***15th October, 2026***.

37. Learned Senior Additional Advocate General to transmit copy of this order to Director General of Police, Himachal Pradesh for compliance. List before Registrar (Judicial) on ***28th September, 2026*** for fixing a date for recording of additional evidence.

38. Steps for re-calling/summoning witnesses be taken within three days and notice be issued to these witnesses for next date to be fixed for recording additional evidence by Registrar (Judicial) of this Court.

The application is allowed and disposed of in aforesaid terms.

(Vivek Singh Thakur),
Judge.

(Bhupesh Sharma),
Judge.

15th September, 2026
(Keshav)

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