



2026:UHC:1539

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p>C528 No. 214 of 2026 <u>Hon'ble Alok Mahra, J.</u></p> <p>Mr. Gulshan Pandey, Advocate for the applicants.</p> <p>Mrs. Pushpa Bhatt, Additional Advocate General and Mr. S.C. Dumka, A.G.A. for the State of Uttarakhand.</p> <p>2. As per the applicants, respondent no. 2 lodged and F.I.R against the applicants for offences punishable under Sections 323, 354, 498-A, 504 and 506 I.P.C. read with Section 3/4 of the Dowry Prohibition Act, 1961. Following investigation, a chargesheet was filed. Dissatisfied with their previous counsel, the applicants appointed a new counsel, who filed the application under Section 311 Cr.P.C. seeking re-examination of PW-1 (the complainant) and PW-2 (complainant's father), described as essential witnesses. The trial court dismissed the application vide the impugned order dated 18.12.2025, prompting the present application.</p> <p>3. Learned counsel for the applicants submits that the applicants ought not to suffer for the inadvertence of their previous counsel in omitting vital questions during cross-examination. He contends that re-examination of PW-1 and PW-2 is essential for a fair trial and just decision, emphasizing their centrality to the prosecution case.</p> <p>4. I have heard learned counsel for the parties at length and perused the record, including the impugned order and the</p>



			<p>trial court proceedings. The sole ground taken by the applicants for recalling the witnesses is the previous counsel's failure to pose certain vital questions during cross-examination. It is a settled proposition of law that Section 311 Cr.P.C. cannot be invoked to fill lacunae in the case of either party, whether prosecution or defence. The provision empowers the Court, at any stage of inquiry, trial or proceedings, to summon any person as a witness, or to recall and re-examine any person already examined, if their evidence appears essential to the just decision of the case. However, this power must be exercised judiciously, not arbitrarily, and only to discover relevant facts or obtain proper proof thereof.</p> <p>5. Hon'ble Supreme Court in the case of Mohanlal Shamji Soni Vs. Union of India, reported in AIR 1991 SC 1346, has held that in order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 311 Cr.P.C. are enacted where under any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re - examine any person already examined who are expected to be able to throw light upon the matter in dispute. Opportunity of rebuttal shall be given to other party. The aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or</p>
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capricious exercise of the power may lead to undesirable results. It should not be used for filling up the lacuna by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties.

6. Applying the aforesaid precedent, no exceptional circumstances warrant interference with the impugned order. The applicants' grievance stems purely from their previous counsel's alleged oversight, which does not constitute a valid ground under Section 311 Cr.P.C. Permitting recall would amount to filling a defence lacuna, causing prejudice to the prosecution and prolonging the trial unnecessarily. The trial Court correctly exercised its discretion, and no perversity or illegality is discernible in the impugned order. The application lacks merit.

7. In the result, the Criminal Miscellaneous Application is dismissed. No order as to costs.

(Alok Mahra, J.)

10.03.2026

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