



2026:AHC-LKO:25395

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 2993 of 2026

Shubhra Tiwari

.....Applicant(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Home Lko.
And Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Vivek Srivastava, Prashant Shukla
Counsel for Opposite Party(s) : G.A.

A.F.R.

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Prashant Shukla, the learned counsel for the applicant and Sri Ganesh Dutt Bhatt, the learned AGA-I for the State.
2. By means of the instant petition filed under Section 482 Cr.P.C./ 528 BNSS, the petitioner has challenged the validity of an order dated 07.03.2026 passed by the learned Additional Sessions Judge, Court No. XIX, Lucknow in Sessions Trial No. 262/2019 arising out of Case Crime No. 721/2018, under Section 302 IPC, Police Station Indira Nagar, District Lucknow, whereby an application filed by the complainant under Section 311 Cr.P.C. read with Section 165 of the Evidence Act has been allowed.
3. The aforesaid application was filed by the complainant after closure of the prosecution evidence, recording of statement under Section 313 Cr.P.C. and commencement of submissions, stating that Google Search History (Document no. P-6), WhatsApp chat (Document no. P-5) and Media statement of the accused (Document no. P-18) are available on record but the same have inadvertently been left out from being marked as exhibits and she requested that the documents may be marked as exhibits. The complainant further stated that PW-1 has made a mention of accused's sister and the accused has also stated in her statement under Section 313 Cr.P.C. that about 15 days before the incident, the complainant had taken the

phone of the accused and there are WhatsApp chat between the accused and her sister Ruchi Mishra. Therefore, her examination would be necessary for proper adjudication of the case. A further prayer made in the application was for examination of a neighbor of the accused Aradhana Mishra, whose name finds place in the list of witnesses but who has not been examined. She had counseled the accused on many occasions, as the accused felt troubled by having a daughter and she desired to have a son. Her testimony is essential for explaining the mental condition of the accused at the time of the incident.

4. The accused-petitioner filed objections against the application under Section 311 Cr.P.C. *inter alia* stating that the documents P-5, P-6 and P-18 have not been proved and, therefore, they are not admissible in evidence. She alleged that the WhatsApp chat was made by the complainant herself. In absence of the mobile phone having been examined by the Forensic Science Laboratory, no electronic evidence would be admissible. She stated that the documents have been fabricated by the complainant herself.

5. The trial Court allowed the application by the impugned order dated 07.03.2026 holding that at the stage of deciding an application under Section 311 Cr.P.C., the Court is not required to adjudicate upon the reliability, genuineness or the probative value of the materials sought to be exhibited and these aspects are to be considered at the stage of appreciation of evidence. Formal exhibition of a document does not dispense with the requirement of its proof in accordance with law. The accused shall have full opportunity to challenge the admissibility and genuineness of the electronic record during cross examination and at the stage of appreciation of evidence. No prejudice would be caused to the accused by marking the documents already available on record as exhibits. The trial Court also noted that the complainant has filed a certificate under Section 65-B of the Evidence Act supported by an affidavit. Regarding summoning of additional witnesses, the trial Court stated that at the stage of deciding the application under Section 311 Cr.P.C., the Court is not required to determine in advance whether the entire testimony of the witnesses would be admissible or not. If the witness appears to be in a position to depose about the relevant facts, her examination cannot be refused merely on the ground that some parts of her evidence may ultimately be held to be hearsay.

6. The application was also opposed on the ground that it had been filed belatedly. The trial Court rejected this objection by relying upon a decision of the Hon'ble Supreme Court in the case of **P. Chhagan Lal v. M. Sanjay Saw**: (2003) 11 SCC 486, wherein it has been held that the power under Section 311 Cr.P.C. can be exercised at any stage, even after closure of evidence of both sides, provided the evidence appears to be essential for rendering justice.

7. Assailing validity of the impugned order, the learned counsel for the petitioner has submitted that a complainant has no authority to file an application under Section 311 Cr.P.C. in a State case and the trial Court ought to have rejected the application as not maintainable.

8. In support of this contention, the learned counsel for the petitioner has placed reliance on the decision in the case of **Rekha Murarka v. State of West Bengal & Anr.**: (2020) 2 SCC 474, wherein the Hon'ble Supreme Court has examined the extent to which the complainant/victim can provide assistance to the Court and has held as follows: -

"11.1. The use of the term "assist" in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to CrPC had used the words "coordinate with the prosecution". However, a change was later proposed and in the finally adopted version, the words "coordinate with" were substituted by "assist". This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Sections 225 and 301(2), permitting such a free hand would go against the scheme envisaged under CrPC.

* * *

11.5. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by

channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 CrPC or Section 165 of the Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in Uma Saha v. State of Tripura [Uma Saha v. State of Tripura, 2014 SCC OnLine Tri 859] that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself."

(Emphasis added)

9. A perusal of the aforesaid passage makes it clear that although the Hon'ble Supreme Court has held that the victim has a limited role in providing assistance to the Court, if the victim's counsel finds examination of a witness necessary, he may request the Court for invoking the powers under Section 311 Cr.P.C. In the present case precisely that has been done by the complainant. The complainant has requested the Court to invoke the power under Section 311 Cr.P.C. and the Court has accepted the request and has invoked the powers for the reasons recorded in the impugned order.

10. The learned counsel for the petitioner has next relied upon a decision of the Hon'ble Supreme Court in the case of **Dhariwal Industries Ltd. v. Kishore Wadhvani & Ors.**: (2016) 10 SCC 378. The Hon'ble Supreme Court has held as follows: -

"17. We have already explained the distinction between Sections 301 and 302 CrPC. The role of the informant or the private party is limited during the prosecution of a case in a Court of Session. The counsel engaged by him is required to act under the directions of the Public Prosecutor. As far as Section 302 CrPC is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution independently."

11. The Hon'ble Supreme Court has clearly held in **Dhariwal Industries Ltd. v. Kishore Wadhvani & Ors.** (supra) that the trial Court has the power to grant permission to the complainant to conduct the prosecution independently.

12. Section 311 Cr.P.C. reads as follows: -

"S. 311: Power to summon material witness, or examine person present - Any Court may, at any stage of any inquiry, 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 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."

13. A bare perusal of Section 311 Cr.P.C. makes it manifest that filing of an application by the Public Prosecutor is not a precondition for exercise of powers under Section 311 Cr.P.C. The Court can exercise power under Section 311 Cr.P.C. if it has reasons to believe that the circumstances for exercise of powers exist. It cannot be said that the reasons cannot be brought to the notice of the Court by the complainant. The Section by no means can be interpreted to mean that the Court can exercise this powers only *suo moto*. Moreover, if the Court has power to act *suo moto*, the power can be exercised if the Court is of the view that the circumstances warranting exercising powers under Section 311 Cr.P.C. exist. It is immaterial that the circumstances have been brought to the notice of the Court by the complainant or by any other person.

14. Therefore, I find no force in the submission of the learned Counsel for the accused – applicant that the complainant had no locus standi to file the application and I hold that the application filed by the complainant could not be dismissed as not maintainable.

15. No other submission was advanced by the learned Counsel for the petitioner.

16. A perusal of the impugned order shows that the trial Court has passed the impugned order after a proper analysis of the relevant facts and circumstances of the case, on the basis of sound reasons. Inherent powers of this Court acknowledged by Section 482 Cr.P.C. are meant to be exercised to prevent the abuse of the process of any Court or to secure the ends of justice. The filing and allowing of the application under Section 311 Cr.P.C. cannot be said to be an abuse of the process of law and there is no error or illegality in the impugned order which may be causing injustice to the petitioner.

17. In view of the foregoing discussion, I am of the considered view that there is no good ground to entertain the petition. The petition

lacks merit and the same is ***dismissed***.

(Subhash Vidyarthi,J.)

April 10, 2026
Pradeep/-