2025 INSC 534

REPORTABLE

IN THE SUPREME COURT OF INDIA

EXTRAORDINARY CRIMINAL JURISIDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO.10852 OF 2024

ASHUTOSH PATHAK …PETITIONER

VERSUS

THE STATE OF UTTAR PRADESH & ANR. …RESPONDENTS

R1: STATE OF UTTAR PRADESH

R2: SHIKHA PATHAK

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

The present petition arises from the Final Order and Judgment dated 03.07.2024 in Application under Section 482 No.5718 of 2024 (hereinafter referred to as the 'Impugned Order') [**2024:AHC-LKO:45305**] passed by a learned Single Judge of the High Court of Judicature at Allahabad, Bench at Lucknow (hereinafter referred to as the 'High Court'), whereby the petitioner's plea, seeking quashing of Orders dated 18.05.2024 and 06.06.2024 passed by the Court of the learned Additional Chief Judicial Magistrate, Court No.20, Sultanpur, Uttar Pradesh (hereinafter referred to as the 'Trial Court') in Criminal Case

Signature Not Verified
Digitally signed by Jayant Kumar Arora
Date: 2025.04.22 17:08:24 IST
Reason:

No.7940/2024 [***State v Ashutosh Pathak and Ors.***], was dismissed and the two Orders impugned therein were upheld.

FACTUAL OVERVIEW:

2. The marriage between the petitioner and respondent no.2 took place on 16.02.2014. There are two issues from the wedlock. On 30.04.2018, First Information Report No.19/2018 (hereinafter referred to as the 'FIR') was lodged at P.S. Mahila Thana Gauriganj, Amethi under Sections 498-A, 323, 504 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') alongwith Sections 3 and 4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as the 'DP' Act) by respondent no. 2-informant against the petitioner, his brother, and his parents. It was alleged that after marriage, from the beginning, the accused persons started harassing respondent no.2 for dowry and demanded Rs.10 Lakhs and 5 *Biswa* Land in Ambedkar Nagar. The petitioner had left the informant and both were living separately since a long time. It is the case of the informant, that the petitioner's friend, Vinay Kumar Pathak, called her on 23.04.2018 saying that the petitioner is very upset and that she should return. Accordingly, the informant along with her mother and children went to the petitioner's house on 26.04.2018. The events that took place on 28.04.2018 form the gravamen of the

allegations. It is alleged that on that fateful day, the petitioner came back from college and started abusing and hitting the informant. Then, he dragged the informant along with her mother and children and locked them in the kitchen. Petitioner's father is said to have stated that they will burn them to death. Vinay Kumar Pathak is said to have got the lock opened after which the police arrived and rescued the informant and others and took them out of the house safely. It is in this background that the instant FIR came to be registered.

3. After conclusion of the investigation, Chargesheet No.32/2018 was filed on 10.10.2018 against the accused persons. Thereafter, Supplementary Chargesheet No.32A/2018 was filed on 04.11.2018 against the accused persons for commission of offences under Sections 498-A, 323, 504 and 506 of the IPC along with Sections 3 and 4 of the DP Act. The Chargesheet listed a total of 16 witnesses, which included Vinay Kumar Pathak (petitioner's friend) and Kanak Lata Singh (petitioner's neighbour and sister-in-law). Cognizance on the Chargesheet was taken on 22.11.2018 and the accused were summoned. The Trial Court framed charges which were read over to the accused and upon denial of guilt by them, trial commenced.

4. On 19.09.2023, the petitioner filed an application under Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for summoning two persons, *viz.*, Vinay Kumar Pathak and Kanak Lata Singh. The Trial Court *vide* Order dated 18.05.2024 partly allowed the application and issued summons to the witness-Vinay Kumar Pathak and directed him to be present on 30.05.2024. The order/proceedings of 30.05.2024, if any, have not been brought to our notice. Thereafter, on 05.06.2024, though the witness was present, an application was moved by the counsel for petitioner on the ground of illness, which was accepted by the Trial Court with cost of Rs.1,000/- (Rupees One Thousand) imposed and the matter was posted for the next day as last opportunity to examine the witness. On 06.06.2024, the witness-Vinay Kumar Pathak was absent and the Trial Court closed the opportunity to examine the said witness.

5. Aggrieved by the Orders dated 18.05.2024 and 06.06.2024, the petitioner filed Application under Section 482 No.5718/2024 before the High Court, dismissal whereof *vide* the Impugned Order, has led to the instant petition.

PETITIONER'S SUBMISSIONS:

6. Learned counsel for the petitioner submitted that the High Court has failed to appreciate that both Vinay Kumar Pathak and Kanak Lata Singh were arrayed in the list of prosecution witnesses and their names also figured in the examination-in-chief of the complainant. In such scenario, the Courts below erred in only partly allowing the application under Section 311 of the Code.

7. It was further submitted that the application under Section 311 of the Code was filed by the petitioner for production of prosecution witnesses and it was partly allowed and witness-Vinay Kumar Pathak was summoned. Hence, it was incumbent on the prosecution to conduct the examination-in-chief of such witness and only thereafter the petitioner would have been able to cross-examine him. It was contended that the courts below misinterpreted the inquisitorial powers under Section 311 of the Code inasmuch as they have put the onus of conducting the examination-in-chief of the witness-Vinay Kumar Pathak on the petitioner, which could not have been done having regard to the fundamental principles of criminal jurisprudence.

8. It was argued that a fundamental error has been committed in closing the opportunity to examine the witness-Vinay Kumar Pathak, and the same is in ignorance of the well-settled principle, i.e., the witnesses who are arrayed in the list of witnesses shall be examined by the prosecution and not by the defence at the first instance of examination. It was pointed out at the Bar that this witness was neither dropped from the list of prosecution witnesses nor was he examined by the prosecution. It was urged that the special leave be granted and the (consequent) appeal be allowed.

RESPONDENT NO.2'S SUBMISSIONS:

9. *Per contra*, learned counsel for the informant at the outset submits that the Impugned Order is well-reasoned and does not call for any interference. It was submitted that the High Court by Order dated 25.07.2022 [**2022:AHC-LKO:37885**] in Application under Section 483 No.291/2022 [***Shikha Pathak v State of Uttar Pradesh and Ors.***] had directed to expedite the trial in the underlying case, but the petitioner has made every attempt to delay the same.

10. It was submitted that the informant/PW1 was examined/cross-examined at length as PW1 in 2020-2021. Statements of the accused persons under Section 313 of the

Code were recorded on 01.05.2023. Thereafter, the petitioner only to delay the proceedings on numerous occasions sought adjournments and moved applications on vexatious grounds. *Vide* Order dated 25.08.2023, the earlier application filed by the petitioner under Section 311 of the Code, to re-examine the informant, after completion of prosecution evidence and recording of Section 313 statement(s), was dismissed by the Trial Court. Subsequent thereto, the petitioner had moved the current application under Section 311 of the Code, which was only partly allowed by the Trial Court. The filing of two separate applications also show that the petitioner is trying to delay the trial, contended learned counsel.

11. It was further submitted that the Trial Court permitted the petitioner to examine the witness-Vinay Kumar Pathak from the side of the defence. The said witness was present in Court on 05.06.2024 since the morning, but the petitioner sought an adjournment which was also allowed by the Trial Court subject to cost of Rs.1,000/- and the case was fixed for 06.06.2024, but on the next day also the petitioner sought an adjournment due to which his right to examine the witness was closed. It was pointed out that the said witness is the petitioner’s friend and permitting

the petitioner to examine the said witness, who was listed as a prosecution witness, after conclusion of prosecution evidence and the process under Section 313 of the Code and at the stage of defence evidence, will make the prosecution case doubtful. It was submitted that the present appeal be dismissed.

RESPONDENT NO.1-STATE'S SUBMISSIONS:

12. Learned counsel for the State of Uttar Pradesh supported the stand of the respondent no.2-informant, adopted the submissions canvassed on her behalf and prayed for dismissal of the petition.

ANALYSIS, REASONING AND CONCLUSION:

13. Having heard learned counsel for the parties and going through the material on record, at the outset, it would be relevant to understand the object and ambit of Section 311 of the Code, which reads as follows:

> '***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.'

14. In a decision of recent vintage *viz*. ***Satbir Singh v State of Haryana***, **2023 SCC OnLine SC 1086** (penned by one of us, Ahsanuddin Amanullah, J.), the Court surveyed the law on the subject. The relevant part of the discussion therefrom is extracted hereunder:

'***9.*** *Section 311 of the Criminal Procedure Code, 1973 (hereinafter referred to as the "CrPC") has engaged this Court's attention before. We will advert to a few decisions of recent vintage. While overturning an order of the High Court allowing an application for recall of a witness, which was rejected by the trial Court, this Court held as under, in Ratanlal v. Prahlad Jat, (2017) 9 SCC 340:*

'17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, 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. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to

prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. In Vijay Kumar v. State of U.P. [Vijay Kumar v. State of U.P., (2011) 8 SCC 136: (2011) 3 SCC (Cri) 371: (2012) 1 SCC (L&S) 240], this Court while explaining scope and ambit of Section 311 has held as under: (SCC p. 141, para 17)

> *"17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of [CrPC] and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously."*

19. In Zahira Habibullah Sheikh (5) v. State of Gujarat [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8], this Court has considered the concept underlying under Section 311 as under: (SCC p. 392, para 27)

> *"27. 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."

20. In State (NCT of Delhi) v. Shiv Kumar Yadav [State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402: (2016) 1 SCC (Cri) 510], it was held thus: (SCC pp. 404g-405a)

"… Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further

opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined."

21. The delay in filing the application is one of the important factors which has to be explained in the application. In Umar Mohammad v. State of Rajasthan [Umar Mohammad v. State of Rajasthan, (2007) 14 SCC 711: (2009) 3 SCC (Cri) 244], this Court has held as under: (SCC p. 719, para 38)

"38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where stricto sensu the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he

> *had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed.*"'

10. *In Manju Devi v. State of Rajasthan, (2019) 6 SCC 203, this Court emphasized that a discretionary power like Section 311, CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone. A note of caution was sounded in Swapan Kumar Chatterjee v. Central Bureau of Investigation, (2019) 14 SCC 328 as under:*

> '*10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.*
>
> *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 re-examination 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.*
> *12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.'*
>
> ***11.*** *In Harendra Rai v. State of Bihar, 2023 SCC OnLine SC 1023, a 3-Judge Bench of this Court was of the opinion that Section 311, CrPC should be invoked when '… it is essential for the just decision of the case."*
>
> (emphasis supplied)

15. Having regard to the afore-stated principles, we turn to the facts of the instant case. The grievance of the petitioner is two-fold. *Firstly*, the in-part acceptance of his application under Section 311 of the Code and consequent non-summoning of witness-Kanak Lata Singh. *Secondly*, closure of the opportunity to examine the summoned witness-Vinay Kumar Pathak. Let us examine these issues *ad seriatim*.

16. The prosecution recorded the statements of the formal witnesses but chose to only produce three witnesses (PW1, PW2 and PW3). After completion of the prosecution evidence, the statement of the petitioner was recorded on 01.05.2023.

Thereafter, the petitioner had filed an application under Section 311 of the Code for summoning Vinay Kumar Pathak and Kanak Lata Singh as independent witnesses. As noted previously, from the record, it transpires that Vinay Kumar Pathak is a friend of the petitioner and Kanak Lata Singh is the sister-in-law as well as neighbour of the petitioner.

17. The contents of the FIR and the informant's evidence suggest that it was Vinay Kumar Pathak who had made the call to the informant and called her to the petitioner's home. He was also said to have been present on the spot of the incident. On the contrary, Kanak Lata Singh, though petitioner's sister-in-law, is a neighbour but no material has come on record to suggest that she has any evidence to offer which would appear to be essential to the just decision in trial. Hence, we do not find any infirmity in the Orders of the Courts below in denying to issue summons to Kanak Lata Singh.

18. The Trial Court *vide* Order dated 18.05.2024 directed the accused to ensure the presence of Vinay Kumar Pathak on 30.05.2024, on which date defence evidence was to be presented. As noted by the High Court in the Impugned Order,

nothing has been disclosed as to what happened on the said date. No order/proceeding of that date has been produced even before this Court. Nevertheless, it appears that the witness was not examined on the date fixed. Thereafter, the matter came up on 05.06.2024, when although the witness was present, an adjournment was sought by the defence on the ground of ill-health of learned counsel concerned. The Trial Court granted the adjournment as a last opportunity and imposed cost of Rs.1,000/- on the petitioner. The matter was then taken up on the next day, on 06.06.2024, when the witness was absent and thus, the Trial Court closed the opportunity to examine him.

19. From the above sequence of events, it is crystal clear that the defence was given ample opportunity to examine the witness-Vinay Kumar Pathak. The onus was on them to ensure his presence and examine him. We are not in agreement with the argument advanced by learned counsel for the petitioner that since the witness was arrayed in the list of prosecution witnesses, it was incumbent on the prosecution to examine him in the first instance. We may only note that the said witness never entered the witness box as a prosecution witness, and he was summoned as an independent witness on application made by the petitioner.

20. The statements of the accused persons under Section 313 of the Code were recorded on 01.05.2023. The first application under Section 311 of the Code filed by the petitioner was dismissed by the Trial Court on 25.08.2023 and the matter was posted for defence evidence on 10.09.2023. Thereafter, the petitioner filed the present application under Section 311 of the Code on 19.09.2023. It is to be borne in mind that the High Court *vide* Order dated 25.07.2022 referred *supra* had directed expeditious decision in the trial. In this factual background, the petitioner cannot be permitted to adopt dilatory tactics and delay the conclusion of the trial. The conduct of the petitioner in preferring successive applications under Section 311 of the Code and seeking adjournments, we may add, goes to show his evasive tactics, non-cooperation and disinterest in early conclusion of the trial. This Court will not be party to such abuse of the process of law. On this count too, we do not find any infirmity with the Impugned Order.

21. In view of the above, the petition, being devoid of merit, stands dismissed. Special leave is refused; the Impugned Order of the High Court being well-reasoned is affirmed.

22. No order as to costs. I.A.s No.177474/2024 and 177477/2024 are allowed; exemptions sought for are granted.

…….....J.
[SUDHANSHU DHULIA]

…….....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
04 FEBRUARY, 2025

ITEM NO.36-A COURT NO.12 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10852/2024

[Arising out of impugned final judgment and order dated 03-07-2024 in A482 No. 5718/2024 passed by the High Court of Judicature at Allahabad, Lucknow Bench]

ASHUTOSH PATHAK Petitioner(s)

VERSUS

STATE OF U.P. & ANR. Respondent(s)

(IA No.177474/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.177477/2024-EXEMPTION FROM FILING O.T.)

Date : 04-02-2025/22-04-2025

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) : Mr. Varun Mishra, AOR
Mr. Vikram Pratap Singh, Adv.
Mr. Kranti Pratap Singh, Adv.
Mr. Vaibhav Vikram Singh, Adv.
Mr. Anuj Verma, Adv.
Mr. Ankit Jindal, Adv.
Mr. Tushar Rawal, Adv.

For Respondent(s) : Mr. Rohit K. Singh, AOR
Mr. Pritam Bishwas, Adv.

Mr. Anshuman Siddharth Nayak , AOR
Mr. Vipin Pal, Adv.
Mr. Raja Panda, Adv.
Mr. Rahul Kulhare, Adv.
Ms. Mahika Malik, Adv.
Mr. Krishan Mourya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

On 04.02.2025, the following order was passed :-

"After having heard learned counsel for the parties, we see absolutely no reason to interfere with the impugned order in

exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petition is, accordingly, dismissed.

Reasons to follow."

The reportable Judgment is being uploaded today i.e. on 22.04.2025.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR

(Signed reportable Judgment is placed on the file)

ITEM NO.36 COURT NO.12 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10852/2024

[Arising out of impugned final judgment and order dated 03-07-2024 in A482 No. 5718/2024 passed by the High Court of Judicature at Allahabad, Lucknow Bench]

ASHUTOSH PATHAK Petitioner(s)

VERSUS

STATE OF U.P. & ANR. Respondent(s)

(IA No.177474/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.177477/2024-EXEMPTION FROM FILING O.T.)

Date : 04-02-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) : Mr. Varun Mishra, AOR
Mr. Vikram Pratap Singh, Adv.
Mr. Kranti Pratap Singh, Adv.
Mr. Vaibhav Vikram Singh, Adv.
Mr. Anuj Verma, Adv.
Mr. Ankit Jindal, Adv.
Mr. Tushar Rawal, Adv.

For Respondent(s) : Mr. Rohit K. Singh, AOR
Mr. Pritam Bishwas, Adv.

Mr. Anshuman Siddharth Nayak , AOR
Mr. Vipin Pal, Adv.
Mr. Raja Panda, Adv.
Mr. Rahul Kulhare, Adv.
Ms. Mahika Malik, Adv.
Mr. Krishan Mourya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

After having heard learned counsel for the parties, we see absolutely no reason to interfere with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution

of India. The Special Leave Petition is, accordingly, dismissed.

Reasons to follow.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR