Powers and Restrictions under Section 309 and 311 Cr.P.C

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Section. 309 of the Criminal Procedure Code

Introduction:

The section contains directions to the Courts to conduct criminal proceedings expeditiously on day to day basis until all the witnesses in attendance have been examined. It authorises the Magistrate to remand the accused to judicial custody if necessary after taking cognizance of the offence or commencement of the trial.

This section also regulates the powers of the criminal Courts to postpone or adjourn the proceedings and emphasises that stay of proceedings for indefinite period should be avoided so as to eliminate the chances of loss of evidence by passage of time and unnecessary harassment to the accused.

Sec.309 Cr.P.C: Power to postpone or adjourn proceedings

1. In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded;

   Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet. (Criminal Law (Amendment) Act, 2013.

2. If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

   Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

   Provided further that when witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that -

1. no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;
2. the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;
3. where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanations

1. If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.
2. The terms on which an adjournment or postponement may be granted in include, in appropriate cases, the payment of costs by the prosecution or the accused.

Case Law:

(1) In ***Lt. Col., S.J. Chaudhary Vs State (Delhi Administration) 1984 AIR 618, 1984 SCR 438 the Honourable Supreme Court*** Held as under***:***

" By an order dated December 2, 1983, this court while dismissing a petition for special leave to appeal filed against an order of the Delhi High Court refusing to grant bail to the petitioner until after examination of Rani Chaudhary as a witness, gave a direction that on the commencement of the trial, it should proceed from day-to-day. Alleging that his two Advocates are not prepared to appear in the case from day-to-day as the trial is likely to be prolonged, the petitioner has filed, the present application for modification of the earlier order of this court by the deletion of the direction that the trial should proceed from day-to-day.

We think it is an entirely wholesome practice for the trial to go on from day-to-day. It is must expedient that the trial before the court of a Session should proceed and be dealt with continuously from its inception

to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available, If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded.

We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his Advocate is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day- today. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. The Criminal Miscellaneous Petition is, therefore, dismissed.

(2) ***In Vinod Kumar Vs State Of Punjab on 23 September, 2014 Criminal Appeal No. 554 Of 2012 the Honourable Supreme Court*** held as under:

Para No.1: If one is asked a question, what afflicts the legally requisite criminal trial in its conceptual eventuality in this country the two reasons that may earn the status of phenomenal signification are, first, procrastination of trial due to non-availability of witnesses when the trial is in progress and second, unwarranted adjournments sought by the counsel conducting the trial and the unfathomable reasons for acceptation of such prayers for adjournments by the trial courts, despite a statutory command under Section.309 of the Code of Criminal Procedure, 1973 and series of pronouncements by this Court. What was a malady at one time, with the efflux of time, has metamorphosed into malignancy. What was a mere disturbance once has become a disorder, a diseased one, at present.

Para No.41: Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and

anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort.

Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross- examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

(3) ***In Ajay Singh and Anr and Etc Vs State Of Chhattisgarh and Anr on 6 January, 2017 Criminal Appeal Nos. 32-33 OF 2017 (@ S.L.P. (Crl.) Nos. 7694- 7695 of 2016) the Honourable Supreme Court*** held as under:

Para No.26: The case at hand constrains us to say that a trial Judge should remember that he has immense responsibility as he has a lawful duty to record the evidence in the prescribed manner keeping in mind the command postulated in Section.309 of the Cr.P.C and pronounce the judgment as provided under the Code. A Judge in charge of the trial has to be extremely diligent so that no dent is created in the trial and in its eventual conclusion. Mistakes made or errors committed are to be rectified by the appellate court in exercise of error jurisdiction. That is a different matter. But, when a situation like the present one crops up, it causes agony, an unbearable one, to the cause of justice and hits like a lightning in a cloudless sky. It hurts the justice dispensation system and no one, and we mean no one, has any right to do so. The High Court by rectifying the grave error has acted in furtherance of the cause of justice. The accused persons might have felt delighted in acquittal and affected by the order of rehearing, but they should bear in mind that they are not the lone receivers of justice. There are victims of the crime. Law serves both and justice looks at them equally. It does not tolerate that the grievance of the victim should be comatosed in this manner.

(4) In ***Doongar Singh Vs The State Of Rajasthan on 28 November, 2017 Criminal Appeal Nos. 2045-2046 OF 2017 (Arising out of Special Leave Petition (Crl.)Nos.8994-8995 of 2015) the Honourable Supreme Court*** held as under:

Para No.5: In a criminal case of this nature, the trial court has to be mindful that for the protection of witness and also in the interest of justice the mandate of Section.309 of the Cr.P.C. has to be complied with and evidence should be recorded on continuous basis. If this is not done, there is every chance of witnesses succumbing to the pressure or threat of the accused.

Para No.13. To conclude:

(i) The trial courts must carry out the mandate of Section.309 of the Cr.P.C. as reiterated in judgments of this Court, inter alia, in State of U.P. versus Shambhu Nath Singh and Others, Mohd. Khalid versus State of W.B. and Vinod Kumar versus State of Punjab.

(ii) The eye-witnesses must be examined by the prosecution as soon as possible.

(iii) Statements of eye-witnesses should invariably be recorded under Section. 164 of the Cr.P.C. as per procedure prescribed thereunder.

Para No.14: The High Courts may issue appropriate directions to the trial courts for compliance of the above.

(5) ***In Pradeep Ram Vs The State Of Jharkhand on 1 July, 2019 in Criminal Appeal Nos. 816-817 OF 2019 (arising out of SLP(CRL.) Nos.10051-10052 of 2018) the Honourable Supreme Court*** held as under :

Para No.62: *After having noticed, the relevant provisions of Section.167(2) and Section.309, Cr.P.C and law laid down by this Court, we arrive at following conclusions: -*

(i) The accused can be remanded under Section.167(2) Cr.P.C during investigation till cognizance has not been taken by the Court.

(ii) That even after taking cognizance when an accused is subsequently arrested during further investigation, the accused can be remanded under Section.167(2) Cr.P.C.

(iii) When cognizance has been taken and the accused was in custody at the time of taking cognizance or when inquiry or trial was being held in respect of him, he can be remanded to judicial custody only under Section.309(2) Cr.P.C.

Para No.65: *The special Judge in his order has neither referred to Section. 309 nor Section.167 Cr.P.C under which accused was remanded. When the Court has power to pass a particular order, non-mention of provision of law or wrong mention of provision of law is inconsequential. As held above, the special Judge could have only exercised power under Section.309(2), hence, the remand order dated.25.06.2018 has to be treated as remand order under Section.309(2) Cr.P.C. The special Judge being empowered to remand the accused under Section.309(2) in the facts of the present case, there is no illegality in the remand order dated.25.06.2018 when the accused was remanded to the judicial custody.*

CONCLUSION: There are no hard and fast rules for granting or to refuse adjournment after commencement of the trial of a criminal case, it depends upon facts of each and every case, but the court has to apply its judicial mind while considering the request for adjournment after commencement of the trial keeping in mind the judgments of the Honourable Supreme Court.

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Contd.,

Section. 311 of the Criminal Procedure Code

Introduction: It's the 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.

Sec. 311 Cr.P.C. 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.

Case Law:

(1) In ***Hanuman Ram Vs State Of Rajasthan & Ors on 13 October, 2008 in Criminal Appeal No. 1597 of 2008 (Arising out of S.L.P. (Crl.) No.7382 of 2007) the Honourable Supreme Court*** held as under:

> **Para No.6:** The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court by duty of examining a material witness who would not be brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means

is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

Para No.7: 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 for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers 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 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 wide the power the greater is the necessity for application of judicial mind.

Para No.8: As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections. 60, 64 and 91 of the Indian Evidence Act, 1872 (in short `Evidence Act'), are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second

part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

Para No.9. The object of Section.311 is to bring on record 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. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section.311, but under the Evidence Act which gives a party the right to cross- examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross-examination to the complainant. These aspects were highlighted in Jagat Ravi Vs. State of Maharashtra (AIR 1968 SC 178), Rama Paswan and Ors. Vs. State of Jharkhand (2007 (11) SCC 191) and Iddar and Ors. Vs. Aabida and Anr. (2007 (11) SCC 211).

(2) In ***Rajaram Prasad Yadav Vs State Of Bihar & Anr (2013)14 SCC 461 the Honourable Supreme Court*** while dealing with an application under Section.311 Cr.P.C. read along with Section.138 of the Evidence Act, has laid down the following principles, which will have to be borne in mind by the Courts:

Para No.14: A conspicuous reading of Section.311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression any has been used as a pre-fix to court, inquiry, trial, other proceeding, person as a witness, person in attendance though not summoned as a witness, and person already examined. By using the said expression any as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section.138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for

such a witness so desired for such re-examination. Therefore, a reading of Section.311 Cr.P.C. and Section.138 Evidence Act, in so far as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section.138, will have to necessarily be in consonance with the prescription contained in Section.311 Cr.P.C. It is, therefore, imperative that the invocation of Section.311 Cr.P.C and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. In so far as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.

Para No.23: From a conspectus consideration of the above decisions, while dealing with an application under Section.311 Cr.P.C. read along with Section.138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section.311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section.311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears 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.

d) The exercise of power under Section.311 Cr.P.C. should be resorted 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.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case 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.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) 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.

h) The object of Section.311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial 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 magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the

accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power 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 care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

(3) In ***Ratanlal vs Prahlad Jat on 15 September, 2017 in Criminal Appeal No.499 Of 2014 the Honourable Supreme Court*** held as under:

Para No.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 where under 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.

(4) In ***Manju Devi Vs The State Of Rajasthan on 16 April, 2019 in Criminal Appeal No.688 OF 2019 (Arising out of SLP (Crl.) No. 8315 of 2018) the Honourable Supreme Court*** held as under :

Para No.15: The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section.311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of 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 opposite party. Further, 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. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. 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.

Para No.12: Though it is expected that the trial of a sessions case should proceed with reasonable expedition and pendency of such a matter for about 8-9 years is not desirable but then, the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness.

Important decisions:

1) Sundar Lal Vs. Urmila thakur in Cr. Revision no: 313 of 2017, dt.16.03.2018.
2) Jamat Raj Kewajli Govani Vs State Of Maharashtra in AIR 1968 SC178.
3) Raja Ramprasad Yadav Vs State Of Bihar and another in 2013(14) SCC 461.
4) U.T of Dadra and Nagar Haveli and Anr. Vs. Fatehsinh Mohansinh Chauhan in 2006(7) SCC 529.
5) Iddar & Others Vs. Aabida & Anr in AIR 2007 SC 3029.
6) P. Sanjeeva Rao Vs. State of A.P in AIR 2012 SC 2242.
7) Hoffman Andreas Vs. Inspector of Customs, in Amritsar 2000(10) SCC 430.
8) Vijay Kumar Vs. State of U.P and Anr in 2011(8) SCC 136.
9) Mannan SK and Others vs State of West Bengal and Anr in AIR 2014 SC 2950.
10) Lakshmi Priya Exports (India) Pvt limited and others Vs. Ramalingam Mills Limited and another 2016 law suit (Hyd) 46.

CONCLUSION: There are no hard and fast rules for exercising the discretion under Sec.311 Cr.P.C, it depends upon facts of each and every case, but the court has to apply its judicial mind while exercising its discretion under sec.311 Cr.P.C keeping in mind the judgments of the Honourable Supreme Court.

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