

Legal Current Affairs

S. 311 of the Criminal Procedure Code prohibits recalling a witness only because he provided a different statement in a case involving the same incident: Supreme Court

According to the Supreme Court, in the case of **SAUD FAISAL v. STATE OF UTTAR PRADESH & ANR.** *"merely because a different statement was given by the same prosecution witness in another case relating to the same incident, that itself would not be a reason for recalling the witness under section 311, Cr. P. C."*

The petitioner was facing prosecution for murder. In 2014, during the trial, a key witness by the name of Naushad testified that he had recognised the petitioner as one of the assailants pointing a weapon. The plaintiff was facing yet another trial under the Gangsters Act in connection with the crime. The same witness Naushad testified in the Gangsters Act hearings in 2021 that he was unable to recognize the petitioner as one of the attackers because he was hiding his face with a cloth. The petitioner sought to summon the witness back as a witness in the first trial based on his second statement, which was provided by the witness in 2021. This application was denied by the trial court, and the High Court upheld the decision. He sought the Supreme Court under this backdrop.

The court's ruling in *Sudevanand v. State Through Central Bureau of Investigation (2012)* was cited by the petitioner/accused, who claimed that under typical scenario, the court had permitted the summoning of a witness under section 311. The bench took notice of this. The bench distinguished the case and noted, *"However, we do not agree with the same. The case relied upon by the petitioner/accused, that is, in Sudevanand's case (supra) is on an entirely different factual matrix. In the said case, the witness had given two different versions that is one before the trial court and the different one before the Inquiry Commission, where he had turned into an approver...Therefore, in our view the reliance by the petitioner on the above decision is entirely misplaced."*

The bench then issued the subsequent directive: *"Under these circumstances, we are not inclined to interfere with the order impugned passed by the High Court. Accordingly, the special leave petition is dismissed."*

The "Power to call Material Witness, or interrogate Person Present" is provided under Section 311 of the Criminal Procedure Code. *"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"*