

**(1987) 11 AHC CK 0090**  
**In the Allahabad High Court**  
**Case No : Criminal Revision No. 1144 of 1987**

Sukhhan and Another

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 23-11-1987

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 311

**Citation :** (1988) 12 ACR 59

**Hon'ble Judges :** V.P. Mathur, J

**Bench :** Single Bench

**Advocate :** G.P. Mathur, for the Appellant;

**Final Decision :** Allowed

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## Judgement

V.P. Mathur, J.—Taken up for final disposal. No one appears on behalf of the applicants. But I have heard the learned Counsel for the State.

2. It appears that Irfan Ali who was the first-informant in this case, was examined in Court on 23-7-1986. Thereafter further evidence continued and in the meanwhile an affidavit was placed on the record of the case purporting to have been sworn by the same Irfan Ali on 12-9-1986, through which he denied having seen the occurrence and hence his status as that of an eye witness. In the light of this affidavit, an application was moved on behalf of the accused persons before the learned VI Additional Sessions Judge, Bulandshahr on 6-5-1987 requesting the re-summoning of Irfan Ali for further cross-examination and confrontation with this affidavit under the provisions of Section 311 of the Code of Criminal Procedure. By a rather too short order consisting of a single word "Rejected", the learned VI Additional Sessions Judge disposed of this petition on 12-5-1987 and this has given rise to the present revision.

3. The Sessions Trial No. 555 of 1985, (State v. Sukhhan) was very much in progress and now it has been stayed because of the pendency of this revision. I feel that the order passed by the learned VI Additional Sessions Judge,

Bulandshahr besides being perfunctory and non-speaking order is actually no order in the eye of law. Even on merits, this order could not be treated to be of any value. If the fact was brought to the notice of the learned Court below that one of the main witnesses of this case namely Irfan Ali son of Mohd. Farahim had filed an affidavit in the Court on 12-9-1986 saying that he had not seen the occurrence and thus, the affidavit was clearly in contradiction with his earlier stand taken on 23-7-1986 when he appeared in Court and made the statement on oath and tried to prove the prosecution case; it was only very natural and proper that he should have been summoned afresh u/s 311 of the Code of Criminal Procedure and confronted with this affidavit and given an opportunity to explain his behaviour. This was more so necessary in order to remove any prejudice that might be caused to the accused persons in view of his earlier testimony on 23-7-1986 and his subsequent affidavit dated 12-9-1986.

4. In the result, the revision is allowed. The order of the learned VI Additional Sessions Judge, Bulandshahr dated 12-5-1987 rejecting the petition of the accused persons u/s 311 Code of Criminal Procedure stands quashed and the case is directed to go back to the learned VI Additional Sessions Judge of Bulandshahr with the direction that he will summon the witness Irfan Ali and allow him to be cross-examined with reference to the affidavit dated 12-9-1986 allegedly sworn by him and brought on the record of the Court. This order shall be communicated to the Court below forthwith. The Sessions trial No. 555 of 1985 which has been stayed by this Court shall go on and the stay order shall stand withdrawn.