

Reserved on 29.08.2025
Delivered on 09.09.2025



2025:AHC:158416

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No.- 32171 of 2025

Photu Lal

.....Petitioners(s)

Versus

State Of U.P. And 2
Others

.....Respondents(s)

Counsel for Petitioners(s)	: Bhanu Pratap Singh, Ravindra Sharma
Counsel for Respondent(s)	: G.A.

Court No. - 73

HON'BLE DINESH PATHAK, J.

1. Heard learned counsel for the applicant, learned AGA and perused the record on board.

2. The applicant has invoked the inherent jurisdiction of this Court under Section 528 BNSS for quashing the order dated 15.7.2025 passed by learned Special Sessions Judge (SC/ST Act), Pilibhit, on application no. Kha-58 dated 15.7.2025 filed by the applicant, with the prayer to summon Mr Prem Narayan as a prosecution witness, in Spl. Session Trial No. 62/2018 (State vs. Rajnish Yadav and another), under Sections 427, 504 IPC and Section 3(1)(da) SC/ST Act, arising out of Case Crime No. 0588/2017, Police Station Kotwali, District Pilibhit, pending in the court of learned Special Sessions Judge (SC/ST Act) Pilibhit, whereby aforesaid application under Section 311 CrPC has been rejected.

3. Facts culled out from the record are that having been aggrieved with the incident dated 23.10.2017 alleged to have taken place at 7.30 a.m., the present applicant has lodged an FIR with an allegation that a few days ago, the complainant purchased a car, which he usually parked

outside his house without causing any obstruction to traffic or passage. However, his neighbour, Mr. Rajneesh Yadav alias Pintu Yadav, son of Dhara Singh, who resides next to him, frequently quarreled with him over the car parking issue. He repeatedly explained to Mr. Rajneesh Yadav that he is constructing a garage, which will be completed within a month. However, on 23.10.2017 at around 7:30 AM, Mr. Rajneesh Yadav intentionally hit the complainant's car with his own causing damage. Hearing the noise, he came outside his house and asked Mr. Rajneesh why he damaged his car. At that moment, Mr. Rajneesh Yadav, along with two of his associates (whose names are not known to the complainant) and his mother, started abusing the complainant using filthy language and said, "Saale kanjar, how dare you compare yourself with us!" Hearing the commotion, his wife also came outside, and the accused persons started hurling caste-based slurs, publicly humiliating both of them. He and his wife repeatedly tried to calm them down, but they were furious and became physically aggressive. When the complainant and his wife tried to escape and ran inside their house, all four of the accused persons forcefully entered their home, started damaging household items, and Mr. Rajneesh Yadav pulled out a pistol from his pocket and placed it on complainant temple, threatening: "Saale kanjar, sell this house and run away, or else I will kill you and your entire family!" At this point, several local residents from the colony gathered and rescued him and his wife from the accused person's assault. He immediately dialled 100 (police helpline), and the police vehicle No. 2053 arrived at the spot. However, Mr. Rajneesh Yadav and his associates misbehaved with the police as well, arrogantly saying, "His father is also in the police." The 100-dial police team left without providing any assistance.

4. The Investigating Officer after due investigation has submitted the charge sheet No. 336 of 2017 dated 22.12.2017 arraigning the respondent No. 2 (Rajnish Yadav) under Sections 427, 504 IPC and Section 3(1)(da) of SC/ST Act). Learned court below has taken cognizance by order dated 16.4.2018 and framed charges against the

respondent No. 2 by order dated 1.12.2018 under the aforesaid sections wherein he has been called upon to face trial. At later stage, first informant (applicant herein) has moved an application under Section 319 CrPC to call upon other co-accused, however, same has been partly allowed, vide order dated 10.1.2020, calling upon Smt. Krishna Devi (respondent No. 3) to face trial along with the other accused under Sections 427, 504 IPC and 3(1)(da) of SC/ST Act. Charges were framed against her, as well, by order dated 26.7.2022. Certified copy of the order sheet dated 22.7.2025 (page No. 46 of paper book) reveals that the accused have recorded their statement under Section 313 CrPC. In the meantime, during the trial, the present applicant has moved an application dated 15.7.2025 (annexure No. 3) under Section 311 CrPC beseeching to summon Mr. Prem Narayan (one of the witnesses) to record his evidence on the ground that his statement had been recorded under Section 161 CrPC by the Investigating Officer; however, his name was not included in the list of witnesses in the charge sheet. Thus, applicant is willing to adduce the evidence of Prem Narayan. Learned trial court, by order of the same date i.e. 15.7.2025, has rejected the aforesaid application (paper No. 58 Kha), which is under challenge before this Court.

5. Learned counsel for the applicant submits that the learned trial court has illegally rejected the application under Section 311 CrPC (paper No. 58 Kha) without applying his mind, and solely on the ground that his name is not reflected in the list of witnesses in the charge sheet. He has emphasized that the Investigating Officer has deliberately avoided to include the name of Prem Narayan as witness, although he had been examined by the Investigating Officer under Section 161 CrPC. As per his submission, Prem Narayan is an eye witness and he has vividly described the incident from the very beginning to end. However, he has been ignored by the Investigating Officer in collusion with the accused. The statement of Prem Narayan who is an ocular witness cannot be ignored in such a rough manner, whereas his evidence is significant for the correct decision of the case and to do justice. Party to the litigation

cannot be prevented from producing optimum evidence to substantiate charges framed against the accused. Thus, in the facts and circumstances of the case, summoning the eye-witness, namely, Prem Narayan and his examination is necessary for just decision of the case.

6. Per contra, learned AGA has vehemently opposed the submissions advanced by the learned counsel for the applicant and contended that the charges were framed on 1.12.2018 and the evidence of the accused under Section 313 CrPC completed on 22.7.2025, therefore, at this belated stage, there is no justification to summon a person being a witness, whose name has not been included by the Investigating Officer in the list of witnesses. Learned AGA has emphasized that Prem Narayan has made his statement under Section 161 CrPC on the basis of hearsay, and his evidence is neither relevant nor essential for the purposes of doing complete justice. Intending to delay the proceeding, application under Section 311 CrPC (paper No. 58Kha) has been filed. Therefore, instant application is liable to be dismissed being misconceived and devoid of merits.

7. Having considered the rival submissions advanced by the learned counsel for the applicant as well as learned AGA for the State-respondent and perusal of record on board, it manifests that Prem Narayan son of Shankar Lal, who is sought to be summoned as a witness under Section 311 CrPC, by moving an application dated 15.7.2025 on behalf of the first informant (applicant herein), is neither an ocular witness nor a material witness. After examining his statement under Section 161 CrPC, the Investigating Officer has left his name to be recorded in the list of witnesses in the charge sheet. Present applicant has never tried to move an appropriate application for summoning him as a witness. However, at belated stage, an application dated 15.7.2025 has been moved on a very vague ground, without assigning any cogent reason, to call upon the Prem Narayan as a witness. No strong, valid and convincing grounds have been taken by the first informant to persuade, the learned trial court so that he may exercise its discretion to call Prem Narayan as a witness. The first informant has simply stated in the

application that Prem Narayan had made statement under Section 161 CrPC, however, he has not been included by the Investigating Officer in the list of witness, therefore, he may be called upon as a witness.

8. Perusal of the statement of Prem Narayan under Section 161 CrPC (page No. 25 to 26A of the present application) evinces that he has made a statement based on information received; however, he does not have direct knowledge of the incident in question. He has stated in his statement under Section 161 CrPC that Photu Lal (applicant herein) is his relative. When he had heard about the scuffle with Photu Lal, he came to the scene and saw that his vehicle was damaged because of the collision made by the accused. He was not present at the time of the incident but came after receiving the news. He has emphasized that it is true that vehicle is damaged. He has further stated that he saw and heard that vehicle of Rajnish was also damaged. His sister, Krishna Devi, had informed him that Rajnish had deliberately collided with the vehicle and abused. In the last part of his statement, he stated that he has conveyed what he was told and what he saw with his own eyes.

9. Prima facie, a perusal of the statement made by Prem Narayan under Section 161 CrPC does not disclose any cognizable offence as alleged in the FIR. He reached at the place of occurrence of the offence after receiving the information. He has stated about the damaged vehicle which was lying there. In the subsequent portion of his statement, he reiterated what he had been informed by his sister. Thus, it is evident that he made statement based on the heresay and has no direct knowledge about the incident in question, being a material witness or an ocular witness.

10. Provision under Section 311 CrPC is reproduced hereinbelow:-

“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.”

11. Perusal of Section 311 CrPC denotes that the first part of the section gives discretion to the Court to summon, examine, recall or re-examine any witness; however, the second part of the section, makes it obligatory upon the Court to do so if the evidence is essential for just decision. The provision under Section 311 CrPC empowers the Court to summon any person as a Court witness, even if such person has not been produced either by the prosecution or the defence. However, jurisdiction entrusted upon the court to summon any person as witness should be exercised sparingly so that prejudice would not be caused to the other side, mainly, for the sake of formalities, no witness can be called upon. Thus, power under Section 311 CrPC is both directory and mandatory dependent upon the circumstances. The Supreme Court in the matter of **Mohan Lal Shyam Ji Soni Vs. Union of India, (1991) (1) SCC (Supp.) 271** and in the matter of **Zahira Habibullah Sheikh Vs. State of Gujrat (2004) 4 SCC 158**, has affirmed that provision to recall the witness as enunciated under Section 311 CrPC must be interpreted broadly to ensure the fair trial and discovery of truth.

12. Hon'ble Supreme Court in the matter of **Ashutosh Pathak vs. State of UP, 2025 SCC Online SC 1341** clarified when a party invokes Section 311 CrPC to summon the witness from the prosecutions original witness list (who was not initially examined), the onus lies on the party invoking it to secure the witnesses attendance and present their evidence; especially, if the defence defaulted in presenting them.

13. In **State (NCT of Delhi) vs. Shiv Kumar Yadav : (2016) 2 SCC 402**, it has been held that: -

"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."

14. In **Ratanlal vs. Prahlaḍ Jat, (2017) 9 SCC 340**, it was held that: -

"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."

15. In **Manju Devi vs. State of Rajasthan: (2019) 6 SCC 203**, the Hon'ble 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.

16. In **Swapan Kumar Chatterjee vs CBI, (2019) 14 SCC 328**, it was held that: -

*"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.

17. In **V. N. Patil v. K. Niranjan Kumar, (2021) 3 SCC 661**, it was held that: -

"14. The object underlying Section 311 CrPC 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 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 the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion".

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17. The aim of every court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice."

18. **Harendra Rai vs. State of Bihar 2023 13 SCC 563**, a three Judge Bench of the Hon'ble Supreme Court has held that Section 311, CrPC should be invoked when it is essential for the just decision of the case.

19. In this conspectus, as above, having applied the ratio laid down by the Hon'ble Supreme Court, as discussed above, summoning of Prem Narayan, as sought for by the present applicant in his application under Section 311 CrPC, is not essential for the just decision of the case; inasmuch as he has made statement solely based on the information he received. He has no direct knowledge about the incident in question, as averred in the FIR. He is neither an ocular witness nor a material witness. The Investigating Officer, having considered the statement of the witness (Prem Narayan) under Section 161 CrPC, came to the conclusion that his statement does not corroborate the incident mentioned in the FIR, thus, did not include his name in the list of

witness in the charge sheet. A hearsay statement cannot, prima facie, be considered credible evidence to prove the offence as alleged in the FIR. Learned trial court has rightly rejected the application under Section 311 CrPC moved on behalf of the present applicant. Neither has any justifiable ground been made out to pass an order to secure the ends of justice nor is there an abuse of the process of law warranting interference with the order impugned, in exercise of inherent jurisdiction under Section 528 BNSS. Learned trial court has not committed any illegality, perversity or infirmity in rejecting the application (paper No. 58-Kha) filed on behalf of the first informant (applicant herein) under Section 311 CrPC.

20. Resultantly, instant application, being misconceived and devoid of merits, is dismissed with no order as to the costs.

(Hon. Dinesh Pathak,J.)

September 9, 2025

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