

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MMO No.441 of 2026****Reserved on: 24.09.2026****Date of Decision: 30.09.2026****Hardeep****.... Petitioner****Versus****State of H.P.****.... Respondent*****Coram******Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting? No.*****For the petitioner : Mr Ashok Kumar, Advocate.****For respondent/State : Mr P.K. Nadda, Additional Advocate General.****Rakesh Kainthla, Judge**

The petitioner has filed the present petition for setting aside the order dated 04.04.2026, passed by the learned Additional Sessions Judge, Paonta Sahib District, Sirmour, H.P. (learned trial Court), vide which an application filed by the petitioner/applicant (accused before the learned trial Court) for recall of the witnesses for further cross-examination was dismissed. (*The parties shall hereinafter be referred to in the same*

manner as they were arrayed before the learned trial Court for convenience).

2. Briefly stated, the facts giving rise to the present petition are that the police filed a charge sheet against the accused before the learned trial Court for the commission of offences punishable under Section 328, 380, and 307 of the Indian Penal Code (IPC). The learned trial Court recorded the statements of prosecution witnesses and listed the matter for recording the statements of the accused under Section 313 of the Code of Criminal Procedure, on 28.03.2026. The accused filed an application under Section 348 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 [corresponding to Section 311 of the Code of Criminal Procedure (CrPC)] for recalling the prosecution witnesses, Kanta Nagpal (PW-5), and Pancho Bai (PW-7). It was asserted that learned counsel for the applicant noticed that the witnesses could not be cross-examined regarding certain facts, and it was necessary to cross-examine the witnesses to elucidate the material facts to arrive at the just decision of the case. The respondent/ State will have no prejudice by allowing the application. Hence, it was prayed that the witnesses be recalled.

3. The application was opposed by filing a reply, asserting that the witnesses were cross-examined thoroughly by learned counsel for the accused. The application is silent regarding the points sought to be elucidated in the cross-examination. The recall of the witnesses is not permissible for filling up the lacuna. Kanta Nagpal (PW-5) is aged 82 years, and her repeated Court appearance would cause serious physical and mental hardship. Pancho Bai is a resident of the state of Madhya Pradesh and would be seriously inconvenienced by her re-examination. Therefore, it was prayed that the application be dismissed.

4. Learned trial Court held that the primary object of Section 311 of the CrPC is to arrive at a just decision. The application is silent regarding the material points sought to be elucidated by the further cross-examination. Proper opportunity was granted to the accused to cross-examine the witnesses, and they have been cross-examined at length. The recall of the witnesses would delay the progress of the trial and jeopardise the victim's rights. Therefore, the application filed under Section 348 of the BNSS was dismissed.

5. Being aggrieved by the order passed by the learned trial Court, the accused has filed the present petition asserting that the accused has a right to cross-examine the prosecution witnesses unless such right is waived by him. The statement of a witness without allowing cross-examination of the witness cannot be said to be complete. The further cross-examination of Kanta Nagpal and Pancho Bai is necessary, and in case they are not permitted to be re-examined, it will seriously prejudice the petitioner's case. Therefore, it was prayed that the present petition be allowed and the order passed by the learned trial Court be set aside.

6. I have heard Mr Ashok Kumar, learned counsel for the petitioner and Mr P.K. Nadda, learned Deputy Advocate General for the respondent/State.

7. Mr Ashok Kumar, learned counsel for the petitioner, submitted that the cross-examination of a witness is an essential right of the accused, which cannot be denied to him. The recall of the witness for further cross-examination will not prejudice the respondent, and the rights of the accused/applicant would be protected by the cross-examination. Therefore, it was prayed

that the present petition be allowed and the order passed by learned trial Court be set aside.

8. Mr P.K. Nadda, learned Additional Advocate General, for the respondent/State submitted that the application does not mention the purpose of further cross-examination. The witnesses were cross-examined at length, and there is nothing in the application filed before the learned trial court, or the petition before this Court, as to what material questions could not be asked from the witnesses and why their further cross-examination was necessary. The application was filed to prolong the trial. Therefore, it was prayed that the present application be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. It was laid down by the Hon'ble Supreme Court in *V.N. Patil v. K. Niranjan Kumar*, (2021) 3 SCC 661: 2021 SCC OnLine SC 172, that the object underlying Section 311 of Cr.P.C. is that there should not be any failure of justice due to the mistake of either party in bringing the valuable evidence on record or leaving

ambiguity in the statements of witnesses examined from either side. It was observed:

14. The object underlying Section 311 CrPC is that there may not be a failure of justice on account of the 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, “the wider the power, the greater is the necessity of caution while the exercise of judicious discretion”.

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16. This principle has been further reiterated in *Mannan Shaikh v. State of W.B.*, (2014) 13 SCC 59 : (2014) 5 SCC (Cri) 547 and thereafter in *Ratanlal v. Prahlad Jat*, (2017) 9 SCC 340 : (2017) 3 SCC (Cri) 729 and *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839. The relevant paragraphs of *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839 are as under: (*Swapan Kumar Chatterjee case* [*Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839], SCC p. 331, paras 10-11)

“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 the 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. 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.”

11. It was held in *State v. N. Seenivasagan*, (2021) 14 SCC 1: 2021 SCC OnLine SC 212, that the true test under Section 311 is whether the evidence of the person who is sought to be examined

or recalled is essential to the just decision of the case or not. It was observed:

“12. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under CrPC, summon any person as a witness, 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”. The true test, therefore, is whether it appears to the Court that the evidence of such a person who is sought to be recalled is essential to the just decision of the case.

13. In *Manju Devi v. State of Rajasthan*, (2019) 6 SCC 203 : (2019) 2 SCC (Cri) 765, a two-Judge Bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that: (SCC p. 209, para 13)

“13. ... the length/duration of a case cannot displace the basic requirement of ensuring a 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.

Speaking for the Court, Dinesh Maheshwari J. expounded on the principles underlying Section 311 in the following terms: (*Manju Devi case* [*Manju Devi v. State of Rajasthan*, (2019) 6 SCC 203: (2019) 2 SCC (Cri) 765], SCC pp. 207-08, para 10)

“10. It needs hardly any emphasis that the discretionary powers like those under Section 311CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned, as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595; *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999; *Mina Lalita Baruwa v. State of Orissa*, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; *Rajaram Prasad Yadav v. State of Bihar*, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and *Natasha Singh v. CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828]. In *Natasha Singh v. CBI* [*Natasha Singh v. CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828], though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under : (*Natasha Singh case* [*Natasha Singh v. CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828], SCC pp. 746 & 748-49, paras 8 & 15)

‘8. Section 311CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred

a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in the exercise of the same, it may summon any person as a witness at any stage of the trial or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself that it was in fact essential to examine such a witness, or to recall him for further examination, in order to arrive at a just decision of the case.

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 311CrPC 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 311CrPC 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 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.” (emphasis in original)”

12. A similar view was taken in *K.P. Tamilmaran Vs. State and others* 2025 INSC 576 wherein it was observed: -

47. Before moving further, we consider it necessary to deal with the law relating to section 311 CrPC under which PW-49 was summoned as a witness. Section 311 CrPC reads as follows:

“311. Power to summon a material witness or examine a 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.”

This Section 311 of the CrPC provides wide powers to a Criminal Court to do the following:

- I. Summon any person as a witness, or
- ii. Examine any person present in court, though not summoned as a witness, or

- iii. Recall and re-examine any person already examined.

The above powers can be exercised '*at any stage of any inquiry, trial or other proceeding*' under the CrPC. The provision can be divided into two parts. The word '*may*' is used in the first part of the section, which grants the Court the discretion to summon a witness. In contrast, the second part of the Section uses the word '*shall*', which casts a duty on the Court to summon and examine or recall or re-examine any such person as a witness when it appears to the Court that it is essential to do so for a just decision in the case. In other words, the second part is mandatory, and Courts are obligated to exercise their powers under Section 311 CrPC when the evidence of any person is essential for a just decision of the case. (See: *Jamatraj Kewalji Govani v. State of Maharashtra, 1967 SCC OnLine SC 19*)

48. As is clear from the language of the provision itself, there is wide discretion with the Courts under Section 311 CrPC. These powers can be exercised *suo motu* or on an application moved by either side. After all, the object is that the Court must not be deprived of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination. This power under Section 311 CrPC can be invoked at any stage of the trial, even after the closing of the evidence. Section 311 CrPC can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 of CrPC. As discussed above, powers under Section 311 CrPC can either be exercised on an application moved by either side to the case or *suo motu* by the Court. In case a person is not listed as a witness in the charge-sheet but later the prosecution desires to bring that person as an additional prosecution witness, then the prosecution can move an application to

bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc., would follow as per the procedure. On the other hand, when the Court calls a person as a *Court witness*, there are some restrictions regarding the cross-examination of such a witness.

13. In the present case, the application is silent as to why the witnesses are to be recalled for the cross-examination and what material questions could be asked from the witness, necessitating their further cross-examination. The petition filed before this Court also does not mention the material sought to be proved or the reason for further cross-examination of the witnesses. It was laid down by the Hon'ble Supreme Court in *Neha Begum and Ors. vs. The State of Assam and Anr.* (02.09.2024 - SC Order): MANU/SCOR/98115/2024 that where the application only mentions that the witness could not be properly examined, such application is vague and cannot be allowed. It was observed:

“8. On a perusal of the subject application filed by the petitioners in the trial Court by invoking the provisions under Section 231(2) read with Section 311 CrPC, we find that other than a vague aspersion that the erstwhile

lawyer engaged by the petitioners did not conduct proper cross-examination of the witnesses, no such specific ground was alluded to on behalf of the accused petitioners which could be considered to be a valid ground for the trial Court to invoke the power under Section 311 CrPC.

9. Apparently thus, the prayer made by the petitioners in the application to recall and re-examine the witnesses was nothing but an attempt to fill in the lacuna. There is nothing on record to suggest that non-summoning of the witnesses for further cross-examination could cause grave prejudice to the accused and that such a cause of action was essential for a just decision of the case.”

14. Therefore, the learned trial Court was justified in holding that the recall of the witnesses for further cross-examination was without any reason, simply to prolong the progress of the trial.

15. It was submitted that the reasons were not disclosed, as such disclosure would have alerted the prosecution and the witnesses would have come prepared to the Court. This submission is only stated to be rejected. The learned counsel could have indicated in broad terms that the witnesses were not cross-examined regarding the particular part of their examination-in-chief or regarding some other facts. The accused cannot be permitted to file vague applications on the ground that disclosure of the material would prejudice the accused and would alert the prosecution.

16. It was submitted that the cross-examination of a witness is a valuable right of the accused and the examination of a person is not complete without his cross-examination. This submission will also not help the petitioner. It is undisputed that the petitioner had cross-examined the witnesses at length, when they had appeared before the Court, and they were discharged after their examination. Thus, the examination is complete. The recall of a witness for his cross-examination is not a right of the accused, but is dependent upon the discretion of the Court, which is to be exercised when it is found out that any material, which could not be brought earlier, is required to be brought to arrive at the just decision of the matter. Since the petitioner/accused has not demonstrated any material that could not be brought earlier before the Court, therefore, the learned trial court was justified in declining to exercise the jurisdiction vested in it.

17. The present petition has been filed under Section 528 of BNSS, which is an extraordinary remedy and is to be sparingly exercised. No reasons have been assigned in the present case to show that intervention of this Court is required to prevent the abuse of the process of the Court or to secure the ends of justice.

18. No other point was urged.

19. In view of the above, the present petition fails, and it is dismissed.

20. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

30th September, 2026
(Ravinder)