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* IN THE HIGH COURT OF DELHI AT NEW DELHI

CNR No. DLHC010358332026

+ CRL.M.C. 5695/2026 CRL.M.A. 23785/2026

GAURAV DUA

.....Petitioner

Through: Mr. Saroj Kumar Singh, Adv.

versus

MUKESH TRADING COMPANY

.....Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

ORDER

% 06.08.2026

1. This hearing has been done through hybrid mode.
2. The present Petition is being preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS') corresponding to Section 482 of the Code of Criminal Procedure, 1973, hereinafter referred to as the 'CrPC') seeking quashing and setting aside of the order dated 02.04.2025 passed by the learned Judicial Magistrate First Class, Tis Hazari Courts, Delhi, in **Complaint Case No. 19225/2018**, whereby the petitioner's application under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking recall of the complainant's witness for the purpose of cross-examination was dismissed.
3. The petitioner also impugns the order dated 03.11.2025 passed by the learned Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi, whereby the criminal revision preferred by the petitioner against the aforesaid



order came to be dismissed as not maintainable.

4. The relevant observations of the learned Trial Court in the order dated 02.04.2025 are reproduced hereunder:

“INTERPRETATION OF PROVISION

5. *The provision of 311 Cr.P.C enables the court to render just decision of case by determining the truth after considering all the relevant facts and circumstances. The wide discretionary powers given under the said section must be exercised judiciously and not capriciously or arbitrarily. Moreover, the true test for exercising power under said provision is “essentiality of evidence” i.e. if evidence is essential to the just decision of case, power should ordinarily be exercised. However, at the same time, application under Section 311 Cr.P.C must not be allowed to fill lacuna in the case of prosecution or defence or to cause serious prejudice to opposite party or his defence.*

6. *In the present factual matrix, accused no. 1 & 3 have filed an application to grant an opportunity to cross examine the complainant. The right of the accused to cross examine the complainant was closed on 06.09.2024. As per the application, the complainant could not be cross examined by the previous Counsel for the accused and therefore, one opportunity to cross examine the complainant be granted to the newly engaged counsel. However, perusal of the record shows that matter was fixed for cross examination of complainant witness on 19.11.2022 and thereafter, accused side has been granted several opportunities to cross examine the complainant. **The cross examination of the witness was deferred at the request of accused side on 24.07.2023, 18.09.2023, 08.11.2023 and 28.02.2024. Change of the counsel is not ground to allow an application filed u/s 311 Cr.P.C. Moreover, the application moved on behalf of the accused is silent as to aspect on which the complainant has to be cross examined.***

7. *It is, therefore, evident that sufficient opportunities have already been granted to the accused to cross examine the complainant. Hence, the court is not inclined to grant any*



further opportunity to the accused for the same.

8. Thus, in view of contextual facts, attending circumstances and above-mentioned discussion, application under Section 311 Cr.P.C filed by accused no.1 & 3 stands dismissed.

9. Nothing mentioned in the present order shall be construed as an opinion on the merit of the case.”

5. Learned Counsel for the petitioner further submits that the petitioner, owing to serious medical ailments, including being a cancer survivor, suffering a brain stroke and cardiac complications, and severe financial hardship, was constrained to avail legal aid through the District Legal Services Authority. However, the legal aid counsel neither effectively represented the petitioner nor properly cross-examined the complainant, resulting in closure of the petitioner's right to cross-examination on 06.09.2024. It is argued that the lapse was attributable to ineffective legal representation and not to any deliberate or intentional default on the part of the petitioner.

6. Learned counsel further submits that after engaging a new counsel, the petitioner became aware of the deficiencies in the conduct of the case, obtained the certified copies of the record, and promptly moved an application under Section 348 of BNSS seeking recall of the complainant for the limited purpose of cross-examination. It is contended that permitting such recall would neither prejudice the respondent nor delay the proceedings, but would ensure an effective opportunity to defend the case.

7. This Court has considered the submissions advanced on behalf of the petitioner and perused the material placed on record.

8. Section 311 Cr.P.C lays down the procedure for summoning or recall of any witness at any stage of the trial which can be permitted in order to prevent the failure of justice. Undisputedly, the Court has wide power under



Section 311 Cr.P.C to summon any person as a witness and recall for evidence at any stage of the trial, if it is felt that the same is required for just decision of the case. However, such power cannot be exercised in a routine manner and has to be exercised judiciously. The Apex Court in its judgments in ***Vijay Kumar v. State of U.P. (2011) 8 SCC 136***, ***State (NCT of Delhi v. Shiv Kumar Yadav (2016) 2 SCC 402*** and ***Ratanlal v. Prahlad Jat (2017) 9 SCC 340***, has held that the recall of witness is not a matter of course and power under Section 311 of the Code has to be exercised judiciously, with caution and circumspection and not arbitrarily or capriciously. Such discretionary power has to be exercised on the basis of facts and circumstances of each case and has to be balanced carefully with considerations.

9. A perusal of the impugned order dated 02.04.2025 further reveals that the petitioner was afforded sufficient opportunities to cross-examine the complainant. The matter was listed for cross-examination on several occasions, and the proceedings were adjourned at the instance of the petitioner on 24.07.2023, 18.09.2023, 08.11.2023 and 28.02.2024. Thus, it cannot be said that the petitioner was denied an adequate opportunity to cross-examine the complainant

10. The contention of the petitioner that he was constrained to avail legal aid through the District Legal Services Authority (DLSA) on account of financial hardship arising from his medical condition does not, by itself, merit acceptance as a ground for recall of the complainant. The record reveals that the petitioner was afforded several opportunities to cross-examine the complainant, and the proceedings were adjourned on multiple occasions at the instance of the accused. The mere allegation that the legal aid counsel failed to effectively conduct the cross-examination cannot, by itself, furnish a valid



ground for recalling the witness.

11. A litigant cannot seek reopening of evidence solely on the premise that the earlier counsel adopted an inadequate or different strategy. Acceptance of such a plea would enable every litigant to seek recall of witnesses upon a subsequent change of counsel or dissatisfaction with the manner in which the case was conducted, thereby defeating the object of expeditious disposal of criminal trials. In the present case, the petitioner has failed to demonstrate that the proposed recall is indispensable for the just decision of the case or to specify the material aspects that remained unexplored during the earlier opportunities afforded by the learned Trial Court.

12. This Court finds no perversity, illegality or jurisdictional error in the impugned order dated 02.04.2025 warranting interference in exercise of the inherent jurisdiction under Section 528 of the BNSS read with Section 482 Cr.P.C.

13. Consequently, the present petition is dismissed. Pending application(s), if any, also stand disposed of.

14. The order be uploaded on the website forthwith.

MADHU JAIN, J

AUGUST 6, 2026/JYH/rm