



\$~58

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010377402026

+ **CRL.M.C. 5984/2026 & CRL.M.A. 24919/2026**

MOHIT

.....Petitioner

Through: Mr. S.S. Rawat and Mr. Lakshay
Choudhary, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Digam Singh Dagar, APP
Insp. Rizwan Khan, PS Amar Colony.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

ORDER

% **14.08.2026**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking setting aside of the order dated 19.03.2026 passed by the learned Additional Sessions Judge (FTC)-01, South-East District, Saket Courts, New Delhi in SC No. 2669/2016 titled State v. Mohit, whereby the application filed by the petitioner under Section 311 Cr.P.C. seeking recall of PW-31, Inspector Shiv Raj Bisht, for cross-examination was dismissed.
3. The record reveals that PW-31 Inspector Shiv Raj Bisht was examined-in-chief on 26.05.2025. On the said date, the cross-examination of the witness was deferred on account of the non-availability of the defence counsel.



4. Thereafter, on 17.07.2025, PW-31 again appeared before the learned Trial Court for the purpose of cross-examination. However, as the defence counsel remained absent, the opportunity to cross-examine the witness was closed and the matter was directed to proceed further.
5. Subsequently, an application under Section 311 Cr.P.C. was filed on behalf of the accused seeking recall of PW-31 for cross-examination. The said application was allowed by the learned Trial Court on 17.09.2025 and the witness was directed to be summoned again.
6. Pursuant thereto, the matter was listed on 28.10.2025. However, the Presiding Officer was on leave and the matter was adjourned to 22.11.2025. On 22.11.2025, PW-31 was present before the Court. However, the defence counsel again remained absent. Consequently, the opportunity of the accused to cross-examine the witness was once again closed.
7. Thereafter, the matter was listed on 17.01.2026 for recording the statement of the accused. On the said date, an exemption application was moved on behalf of the accused and the matter was adjourned to 19.03.2026.
8. On 19.03.2026, the petitioner filed a second application under Section 311 Cr.P.C. seeking recall of PW-31 Inspector Shiv Raj Bisht. In the application, it was contended that the petitioner had been diligently pursuing the proceedings and that the failure to cross-examine the witness was attributable to the conduct of the previous counsel, who had allegedly remained absent on several occasions. It was further averred that the petitioner belonged to a poor family, had subsequently engaged a new counsel, and that the testimony of PW-31 was material for the just adjudication of the case.
9. The learned Trial Court, after considering the history of the proceedings and noting that an earlier application for recall had already been allowed and



sufficient opportunities had been granted to the defence to cross-examine the witness, dismissed the second application under Section 311 Cr.P.C. vide the impugned order dated 19.03.2026.

10. Aggrieved by the dismissal of the said application, the petitioner has approached this Court by way of the present petition under Section 528 BNSS seeking setting aside of the impugned order and recall of PW-31 for cross-examination.

11. Learned counsel appearing for the petitioner submits that PW-31 is a material witness in the prosecution case. Though the witness was examined-in-chief on 26.05.2025, the cross-examination could not be conducted on account of the non-availability of the defence counsel, whose wife was stated to be seriously ill. Thereafter, on 17.07.2025, despite the presence of the witness, the defence counsel could not appear due to illness, resulting in closure of the opportunity to cross-examine the witness.

12. Learned counsel further submits that immediately thereafter an application under Section 311 Cr.P.C. was moved seeking recall of PW-31, which ultimately came to be allowed by the learned Trial Court on 17.09.2025. It is argued that once the Trial Court itself found merit in recalling the witness and granted an opportunity to the defence, the subsequent dismissal of the second application has resulted in serious prejudice to the petitioner.

13. It is contended that on the subsequent dates fixed for the cross-examination of PW-31, circumstances beyond the control of the petitioner prevented effective representation. On 28.10.2025, the Presiding Officer was on leave. Thereafter, on 22.11.2025, the previous counsel was unable to appear due to personal difficulties and only a proxy counsel appeared. The



Trial Court, however, declined to entertain the proxy counsel and once again closed the opportunity to cross-examine PW-31.

14. Learned counsel submits that the petitioner himself was never responsible for the delay in the proceedings and had remained diligent throughout. It is argued that the petitioner had been regularly appearing before the learned Trial Court and had been pursuing the matter through his previous counsel. However, owing to the serious medical condition of the said counsel, who was reportedly suffering from a brain haemorrhage and was consequently unable to effectively conduct the matter, the petitioner was left without proper legal assistance.

15. It is further submitted that the petitioner belongs to a poor family and is responsible for the care of his aged mother. The lapses on the part of the previous counsel ought not to be visited upon the petitioner, particularly when the consequences involve denial of an effective opportunity to cross-examine a material prosecution witness in a case involving serious charges under Section 302 IPC.

16. *Per contra*, learned APP appearing for the State opposes the present petition and supports the impugned order passed by the learned Trial Court. It is submitted that no infirmity, illegality, or perversity can be found in the order dated 19.03.2026 warranting interference by this Court in exercise of its jurisdiction under Section 528 BNSS.

17. Learned APP submits that the record clearly demonstrates that sufficient opportunities were granted to the petitioner to cross-examine PW-31 Inspector Shiv Raj Bisht. The witness was first examined-in-chief on 26.05.2025 and his cross-examination was deferred at the request of the defence. Thereafter, on 17.07.2025, despite the presence of the witness, the



defence counsel remained absent, resulting in closure of the opportunity to cross-examine the witness.

18. It is further submitted that the learned Trial Court thereafter showed considerable indulgence by allowing the first application under Section 311 Cr.P.C. filed by the petitioner and recalling PW-31 for cross-examination. Accordingly, a fresh opportunity was granted to the defence. However, even after the witness was recalled, the petitioner failed to avail the opportunity granted by the Court. On 22.11.2025, when the witness was present for cross-examination, the defence counsel again remained absent and no effective steps were taken on behalf of the accused.

19. Learned APP contends that the petitioner cannot seek repeated recall of the same witness after having already been granted a second opportunity by the Trial Court. It is submitted that the power under Section 311 Cr.P.C. is intended to advance the cause of justice and not to enable a party to repeatedly reopen evidence due to its own negligence or lack of diligence.

Analysis and Findings

20. This Court has considered the submissions advanced on behalf of the parties and has perused the material on record.

21. The issue which arises for consideration is whether the learned Trial Court was justified in dismissing the second application filed by the petitioner under Section 311 Cr.P.C. seeking recall of PW-31 Inspector Shiv Raj Bisht for the purpose of cross-examination.

22. The scope and ambit of Section 311 Cr.P.C. is no longer *res integra*. The provision confers wide powers upon the Court to summon, recall or re-examine any witness at any stage of the proceedings if such examination appears to be essential for the just decision of the case. The underlying object



of the provision is to ensure that the truth is brought before the Court and that no failure of justice occurs on account of an inadvertent omission or inability of a party to effectively present its case.

23. Section 311 CrPC reads as under:

“311. Power to summon material witness, or examine person present.— Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon 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.”

24. The expression ‘at any stage’ occurring in Section 311 CrPC is significant. The provision vests the Court with a wide power to summon or recall a witness where his evidence appears to be essential for a just decision of the case. While the stage at which such power is invoked is a relevant consideration, it cannot, by itself, operate as an absolute bar where the Court is satisfied that the evidence sought to be brought on record is essential for a just decision of the case.

25. In ***Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374***, the Supreme Court observed that the determinative factor while exercising powers under Section 311 Cr.P.C. is whether the evidence sought to be brought on record is essential for arriving at a just decision of the case. The Court further held that the provision is intended to ensure that justice is not defeated on account of mistakes committed by either party during trial.



26. Similarly, in ***Ratanlal v. Prahlad Jat, (2017) 9 SCC 340***, the Supreme Court reiterated that though the power under Section 311 Cr.P.C. is wide, the same is intended to enable the Court to discover the truth and render a just decision. The Court emphasized that the provision should be invoked where the evidence sought to be elicited is necessary for a fair adjudication of the matter.

27. In the present case, PW-31 Inspector Shiv Raj Bisht is the Investigating Officer of the case. The testimony of the Investigating Officer forms an important link in the prosecution case and affords the accused an opportunity to test the fairness of the investigation, confront the witness with contradictions, and challenge the manner in which the investigation was conducted. Effective cross-examination of the Investigating Officer is therefore an important facet of a fair trial.

28. The record reveals that PW-31 was examined-in-chief on 26.05.2025. The cross-examination was deferred due to the non-availability of the defence counsel. Thereafter, on 17.07.2025, though the witness was present, the defence counsel remained absent and the opportunity was closed.

29. Significantly, the learned Trial Court itself found merit in the request of the petitioner and vide order dated 17.09.2025 allowed the first application under Section 311 Cr.P.C. seeking recall of PW-31. Thus, the necessity of the witness for the purposes of cross-examination already stood recognized by the Trial Court.

30. The subsequent closure of the opportunity appears to have arisen primarily on account of the continued absence and inability of the previous defence counsel. The petitioner has specifically averred that the previous counsel was suffering from serious medical complications, including a brain



haemorrhage, and was unable to effectively conduct the proceedings.

31. The petitioner is facing trial for offences punishable under Section 302 IPC and is stated to be the principal accused in the case. The consequences of the trial are therefore grave. In such circumstances, denial of an opportunity to cross-examine the Investigating Officer would have a direct bearing upon the ability of the accused to effectively defend himself.

32. The petitioner is not seeking repeated recall of a witness whose cross-examination has already been completed. Rather, the petitioner seeks an opportunity to undertake the cross-examination of PW-31 which has admittedly never taken place. The request is therefore not aimed at filling lacunae in the defence case or reopening concluded evidence, but at securing an effective opportunity to test the testimony of a material prosecution witness.

33. In the considered opinion of this Court, the failure to cross-examine PW-31 cannot be attributed entirely to the petitioner. The material on record indicates that the defaults primarily arose on account of the circumstances relating to the previous counsel. The petitioner ought not to suffer irreparable prejudice in a prosecution involving serious charges merely on account of lapses attributable to his legal representation.

34. The interests of justice would therefore be better served by granting the petitioner one final and effective opportunity to cross-examine PW-31 Inspector Shiv Raj Bisht. Such a course would ensure that the trial proceeds on the basis of a complete evidentiary record and would also advance the fundamental requirement of a fair trial.

35. Accordingly, considering the facts and circumstances of the case, the nature of the witness sought to be recalled, and in order to ensure a fair



opportunity to the petitioner to defend himself, the impugned order dated 19.03.2026 is set aside.

36. The application filed by the petitioner under Section 311 Cr.P.C. is allowed. The learned Trial Court shall summon PW-31 Inspector Shiv Raj Bisht for the limited purpose of his cross-examination by the petitioner.

37. It is, however, made clear that the present opportunity is being granted as a final opportunity in the peculiar facts of the case and shall not be treated as a precedent for seeking repeated recall of witnesses.

38. The petitioner shall ensure that the cross-examination of PW-31 is conducted on the date fixed by the learned Trial Court. No adjournment whatsoever shall be sought on behalf of the petitioner or his counsel on the said date. In the event any request for adjournment is made, the learned Trial Court shall be at liberty to decline the same.

39. However, considering the fact that PW-31 had already been recalled once at the instance of the petitioner and the opportunity granted by the learned Trial Court was not availed, this Court is of the view that the present indulgence ought to be made subject to payment of costs.

40. Accordingly, the opportunity granted to the petitioner to cross-examine PW-31 Inspector Shiv Raj Bisht shall be subject to the petitioner depositing costs of ₹10,000/- (Rupees Ten Thousand Only) with the Delhi State Legal Services Authority (DLSA), South-East District, Saket Courts, New Delhi, within a period of two weeks from today.

41. Proof of deposit of the aforesaid costs shall be placed before the learned Trial Court on the next date of hearing. In the event the costs are not deposited within the stipulated period, the benefit of the present order shall automatically stand withdrawn and the impugned order dated 19.03.2026



shall revive.

42. In case the petitioner, his counsel, or any person acting on his behalf fails to avail the opportunity so granted, no further opportunity for recall or cross-examination of PW-31 shall be granted by the learned Trial Court.

43. It is further directed that if, PW-31 appears before the learned Trial Court and the petitioner fails to cross-examine him on the date fixed, the testimony already recorded in the examination-in-chief of PW-31 shall be read in evidence.

44. Conversely, if PW-31 fails to appear despite service or is otherwise unavailable for reasons not attributable to the petitioner, the learned Trial Court shall proceed in accordance with law and pass appropriate orders keeping in view the stage of the trial and the necessity of expeditious disposal of the matter.

45. The learned Trial Court shall endeavour to complete the cross-examination of PW-31 on the very date fixed and thereafter proceed with the trial in accordance with law without granting unnecessary adjournments to either side.

46. The petition is accordingly allowed in the aforesaid terms. Pending applications, if any, also stand disposed of.

47. The order be uploaded on the website *forthwith*.

MADHU JAIN, J

AUGUST 14, 2026/prg/P