



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

328

CRM-M-69179-2025
Decided on : 09.12.2025

Gurdit Singh and others

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Vipin Mahajan, Sr. Advocate with
Ms. Tejinder Kaur, Advocate
for the petitioner(s).

Mr. Vinay Malhotra, DAG, Punjab
assisted by ASI Ravinder Singh.

SANJAY VASHISTH, J. (Oral)

1. Petitioners herein, namely, (1) Gurdit Singh, (2) Bhola Singh, (3) Manjinder Singh @ Manna, (4) Kuldeep Singh @ Givi, and (5) Dharaminder Singh, have filed present petition under Section 528 of BNSS, 2023, for quashing of the order dated 26.11.2025 (Annexure P-16), passed by learned Judge, Special Court, Gurdaspur, in case bearing No. NDPS-325-2022, titled as “**State v. Gurdit Singh @ Gitta and others**”, arising out of FIR No. 115, dated 30.06.2022, under Section 21(C), 25 and 29 of the NDPS Act, registered at Police Station Dinanagar, District Gurdaspur, whereby, application filed by the prosecution, under Section 348 of the BNSS, 2023 (corresponding Section 311 of the Cr.P.C.), has been allowed.

2. At the outset, learned Senior Counsel for the petitioners submits that vide impugned order dated 26.11.2025 (Annexure P-16), on application filed by the State/Public Prosecutor under Section 348 BNSS has been allowed, whereby it was prayed that witness ASI Jagdish Singh, who had



already appeared as PW-1, be recalled and re-examined, as while appearing on 19.04.2024 and 25.02.2025 he deposed only regarding the disclosure statement of accused Manjinder Singh, but inadvertently, the remaining portion of his statement could not be recorded, though he was a member of the police party according to the prosecution case. Further submits that unless remaining testimony of PW-1 is recorded as per his statement under Section 161 Cr.P.C. (Annexure P-6), the evidence would remain incomplete, which may affect the final adjudication of the case.

Trial Court allowed the said application vide impugned order by observing that perusal of the record reveals that ASI Jagdish Singh was shown as a member of the police party and had deposed only with respect to the disclosure statement of accused Manjinder Singh. It was further observed that any material witness can be recalled for his re-examination if his evidence appears essential for just decision of the case.

3. Learned Senior Counsel for the petitioners argues that no specific or cogent reason has been assigned by the prosecution, as to how recalling the PW-1 would serve the ends of justice. It is submitted that permitting such re-examination, at this belated stage, would allow the prosecution to fill up the lacunae, after realizing the weaknesses disclosed during cross-examination conducted by the accused.

In support of his contentions, learned Senior Counsel places reliance upon the judgments **Rajesh Kumar @ Rajesh Chauhan v. Gurmeet Singh and another**, Law Finder Doc Id # 2549293 : 2024 NCPHC 9934, and **Sovaran Singh Prajapati v. State of Uttar Pradesh**, 2025(2) RCR (Criminal) 98 : Law Finder Doc Id # 2695295, to argue that allowing such a



request at this stage would amount to give prosecution an opportunity to fill up lacunae after noticing the weaknesses exposed in cross-examination, which is impermissible in law.

Hence, prayer has been made for setting aside the impugned order dated 26.11.2025 (Annexure P-16).

4. On 08.12.2025, when the matter was taken up, notice was issued to the learned State Counsel in Court and served upon him, and the proceedings were deferred to 09.12.2025 (i.e. for today) so that the limited issue raised by the petitioners may be decided expeditiously without further delay in trial proceedings.

5. Learned State Counsel submits that the re-examination of PW-1 is essential since he was present as a member of the police party from the inception of the case, which is evident from the FIR itself. His omission during examination-in-chief occurred inadvertently. Therefore, his further examination is necessary to prove the prosecution case in a fair manner. Accordingly, prayer is made for dismissal of the petition.

6. I have heard learned counsel for the parties and perused the relevant material available on record, with their assistance.

7. PW-1 ASI Jagdish Singh got recorded his statement on 05.07.2022 under Section 161 Cr.P.C. (Annexure P-6) before SHO Kapil Kaushal, P.S. Dinanagar. Said statement has been placed on record and reads as under:-

“Statement of ASI Jagdish Singh No. 1133/Gurdaspur, Police Station Dinanagar, District Gurdaspur: Under Section 161 Cr.P.C.,

I state that I am posted at Police Station Dinanagar as the Investigating Officer. Today, along with Head Constable Harpinder Singh No. 331/Gurdaspur and other accompanying staff, I was present with you at



the police station in connection with the investigation of the present case. During interrogation, accused Manjinder Singh alias Manna, son of Sarmakh Singh, resident of Cheema Khurd, Police Station Sarai Amanat Khan, District Tarn Taran, disclosed before you that "On 28.06.2022, Malkeet Singh, son of Surjit Singh, resident of Cheema Kalan, Police Station Sarai Amanat Khan, District Tarn Taran, through his acquaintance, an unknown person, took from us the Innova vehicle bearing registration number PB-08-CX-2171 from Sundarbani (Jammu) for the purpose of bringing a consignment of heroin. That unknown person, on 30.06.2022 at about 4:00 p.m., returned the said vehicle along with the consignment of heroin to us near Bhambla town, about 2 kilometers towards Jammu side from Sundarbani, where on the main road going from Jammu to Sundarbani, on the right side of the road, there is a milestone on which 'Jammu 65 kilometers' and 'Akhnoor 37 kilometers' is written. I can point out this place to you. "On this disclosure, you prepared a separate memo of disclosure and pointing out. Thereafter, you, along with us, took accused Manjinder Singh alias Manna to Sundarbani, and the accused stopped the vehicle about 2 kilometers behind Bhambla town from Sundarbani side and stated that this was the place where that unknown person had returned to them the consignment of heroin along with Malkeet Singh's Innova vehicle. On this, you prepared a separate pointing out memo with photographs of the site. On the disclosure memo and the site pointing out memo with photographs, I and Head Constable Harpinder Singh No. 331/Gurdaspur gave our respective attestations. You recorded our statements at the spot. Which, having been read over to us, are correct.

*Sd/-Kapil Kaushal
Station House Officer,
Police Station Dinanagar,
Dated: 05.07.2022"*

Thereupon, said witness appeared before the trial Court on 19.04.2024 and in his examination-in-chief recorded on oath, as under:-

*"PW-1
Statement of ASI Jadish Singh No.1133/GSP P.S. Dhariwal.
(I am well conversant with English Language).*

ON SA.

On 05.07.2022. I was posted at P.S. Dinanagr. On that day, accused Manjinder Singh suffered disclosure statement Ex. PW1/A before IO SHO Kapil Koshal in which he disclosed that on 28.06.2022 an unknown persons known to Malkit Singh son of Surjit Singh, resident of village Cheema kalan had taken the Innova Car bearing no.PB08 CX-2171 belongs to Malkit Singh from him, Bhola Singh, Manjinder Singh and Kuldeep Singh at Sunader Vani, Jammu for the purpose of bringing the heroin and on 30.06.2020 said unknown persons delivered them abovesaid car and heroin at a place on the road links between Jammu to Sunder Vani near milestone on which 65 kilometer Jammu and 37 kilometer Akhnoor is mentioned. We went to abovesaid place where the 10 photo Ex.PW1/B was clicked which mentioned the exact location of the area. Above said disclosure statement and photo bears



my signatures at Point-A. I identify the accused Manjinder Singh present in the Court.

Xxxxxx is deferred at the request of the counsel for the accused.

RO&AC

*(sd/-Parminder Singh Rai)
Judge Special Court
Gurdaspur, UID No. PB0175
Date: 19.04.2024"*

8. Surprisingly, prosecution did not realize the necessity of moving an application immediately on completion of examination-in-chief, and instead the matter was deferred for cross-examination to 25.02.2025.

In the first line of cross-examination, the accused in the case opened up their stand and to the question posed to the said witness, it was specifically answered by the witness that, *"I did not witness the process of alleged recovery effected in the night of 30.06.2022. Except disclosure statement of Manjinder Singh and taking him to Jammu to Sunderbani Road, I do not know the facts of the case. It is wrong to suggest that accused Manjinder Singh never made any disclosure statement nor he was taken to any place on Jammu Sunderbani Highway. It is wrong to suggest that I have deposed falsely."*

9. Even at that stage or soon thereafter, no application was filed by the prosecution for recalling the said witness. Not only this, statement of the accused under Section 313 Cr.P.C. was recorded on 04.03.2025, and even up-till leading of the defence evidence, no such request was made. Application under Section 311 Cr.P.C. was filed only on 30.07.2025 (Annexure P-14), i.e., after around five months, without assigning any cogent reason demonstrating necessity for such re-examination and that too



in the interest of justice.

It is also noticeable that on earlier occasion also, a similar application for recalling the PW-3 ASI Gurmej Singh and PW-9 MHC Sunny Bains was dismissed by the trial Court vide order dated 28.02.2025 (Annexure P-11), holding that such request at the final stage would amount the filling up lacunae.

While passing the impugned order dated 26.11.2025 (Annexure P-16), the trial Court failed to take note of its own earlier order dated 28.02.2025.

10. The Hon'ble Apex Court and the High Courts have consistently held that the discretionary power under 348 BNSS, 2023 cannot be exercised to enable the prosecution or to the accused to fill up lacunae or overcome the defects in its own case, once exposed during trial. Reference in this regard is made to **Sovaran Singh Prajapati v. State of Uttar Pradesh** (supra), wherein, it is held that power under Section 348 of BNSS, 2023, needs to be exercised only if it benefits both prosecution and defendant. Serving the purpose of one, at the cost of the interest of others would be improper use of exercise of such power. The relevant para of the aforesaid judgment reads as under:-

*“29. The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by the court gives evidence against the complainant, he should be allowed an opportunity to cross examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. These aspects were highlighted in **Jamatraj Kewalji Govani v. State of Maharashtra** [(1967) 3 SCR 415 : AIR 1968 SC 178 : 1968 CriLJ 231].*

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30.1 A perusal and consideration of the aforesaid decisions reveal the following principles as governing the application of Section 311 Cr.P.C.:

- (a) The Section is divided into two parts, the first being directory with the use of the word 'may' and the latter being mandatory with the use of the word 'shall'.**
- (b) The power of the Court is couched in the widest terms possible with no express limitation thereon.**
- (c) The exercise of such power is not only the prerogative but also the duty of the Court, in connection with a witness who may be considered absolutely necessary, in the interest of justice.**
- (d) This power is to be used both for the benefit of the prosecution and the defence. To summon a witness because it serves the case of one of the parties and not the other, would be improper.**
- (e) This power can be exercised at any stage of proceedings, i.e. enquiry, trial or any other.**
- (f) Power is to be exercised judiciously since wider the power, greater the requirement of the application of a judicial mind.**
- (g) If a witness so-called under this power, gives evidence against the complainant, the latter should be given an opportunity to cross-examination. This power arises not under Section 311 but under the Indian Evidence Act, 1872.**
- (h) A witness cannot be recalled by the use of this power to simply fill up a lacuna in the case of the prosecution."**

11. Similarly, this Court in **Rajesh Kumar @ Rajesh Chauhan v. Gurmeet Singh and another** (supra), while referring to the judgments of the Hon'ble Apex Court in **Rajaram Prasad Yadav v. State of Bihar and another**, 2013(3) RCR (CrI.) 726, and **Manan SK v. State of West Bengal**, (2014) 13 SCC 59, has observed as under:—

"12. A three Judges Bench of Hon'ble Supreme Court also examined the aforesaid issue in 2013 (3) RCR (Criminal) 726 Rajaram Prasad Yadav v. State of Bihar and another. In the said case, the trial Court disallowed the application filed by State under Section 311 of the Code of Criminal Procedure (Cr.P.C.), to re-examine PW-9, the informant. The High Court reversed the order and allowed the said application. While discussing a plethora of judgements, the broad principles with regard to invoking section 311 Cr.PC were culled out as under:

"23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?**



- b) *The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) *If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.*
- d) *The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.*
- e) ***The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.***
- f) *The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) *The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*
- h) *The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- i) *The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*
- j) *Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.*
- k) *The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*
- l) *The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*
- m) *The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*
- n) *The power under Section 311 Criminal Procedure Code 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 care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

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16. *The judgment pressed into service by learned counsel for the petitioner i.e. Mannan Sk. And others v. State of West Bengal and another 2014(13) SCC, 59 was a case where the trial Court had dismissed the application moved by prosecution under section 311 Cr.P.C. but the order was reversed by the High Court. The matter pertained to offence under Section 302 IPC wherein the Investigating Officer during his cross-examination has stated that he has recorded the statement of the deceased before his death, but no such statement had in fact been brought on record. The prosecution had moved an application under Section 311 Cr.P.C. at the stage when the matter was fixed for arguments. The purpose of recalling the witness of the prosecution was to place on record a statement which was virtually in the nature of dying declaration. The importance of a dying declaration in a case where there is no direct evidence can hardly be undermined. Further, in the said case accused were found to be aware of the said statement and had duly cross-examined the Investigating Officer in this regard and it was under these circumstances Hon'ble the Supreme Court while affirming order of High Court observed that it was a case of oversight that the document could not be placed on record earlier and not a case of filling up lacuna.*

17. *However, even in Mannan's case, the broad view taken by Apex Court is in tune with the ratio of Rajaram's case (Supra). The Supreme Court of India in Mannan's case (Supra) held as under:*

"10. The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words 'essential to the just decision of the case' are the key words. The court must form an opinion that for the just decision of the case recall or reexamination of the witness is necessary. Since the power is wide its exercise has to be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill-up the lacuna. Whether recall of a witness is for filling-up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. In all cases it



is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine."

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24. As already noticed above, while the Hon'ble Supreme Court has consistently held that Court has vast powers to summon or recall any witness with the aid of Section 311 Cr.P.C. at any stage but such application can only be allowed if the Court comes to a conclusion that it is absolutely necessary to do so for just decision in the matter. Such application is neither to be allowed to fill up lacuna nor can be allowed to be made as a tool to delay trial. While this Court cannot dispute that the right to fair trial is a crucial and precious right of the accused, but so is the complainant's right to a fair trial which requires that they should not unnecessarily be harassed. Ensuring a fair trial can not be interpreted to mean that the accused has to be afforded opportunities of recalling witnesses for further cross-examination at the mere asking. The case of an accused has to be meritorious where such prayer is made. The Hon'ble Apex Court in case of State (NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402 had emphasized that fairness of a trial has to be seen, not only from the perspective of accused, but also of the victim and society. Thus, this Court also has a duty to ensure an expeditious and fair trial, preventing misuse of such applications for delaying the proceedings before the learned Trial Court."

12. With the help of aforementioned guiding principles, this Court does not hesitate in saying that recalling a witness at concluding stage, i.e., after cross-examination and even after recording of the statement under Section 313 Cr.P.C., would cause prejudice to the accused and is opposed to the principles of fair trial.

Moreover, this Court finds that neither the impugned order (P-16) is speaking one, nor in any manner, Court has expressed its satisfaction in the impugned order dated 26.11.2025 (P-16), while recalling the prosecution witness PW-1 ASI Jagish Singh. Once the witness has already been cross-examined and the defence has disclosed its stand based on the prosecution's own omissions, permitting the recall of witness at this stage, would amount to nullify the defence established during trial and may prove



prejudicial to the accused.

Such an approach, which is contrary to the settled principles of criminal jurisprudence, i.e., allowing of the prayer to recall the witness, if benefiting only to one of the parties, same should not be allowed under the guise of filling up lacuna, causing prejudice to the other side, before even final decision.

Accordingly, the impugned order dated 26.11.2025 (Annexure P-16) is hereby **set aside**. Thus, present petition stands **allowed**.

Pending misc. application(s), if any, are also disposed of.

(SANJAY VASHISTH)
JUDGE

December 09, 2025

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*