

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73 of 2026

Arising Out of PS. Case No.-6 Year-2020 Thana- JAGDISHPUR District- Bhojpur

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1. Indradev Yadav Son of Late Daroga Yadav Resident of-Gram- Roop Bandh, P.S.-Jagdishpur, District- Bhojpur.
 2. Akhilesh Yadav Son of-Rajendra Yadav Resident of-Gram- Roop Bandh, P.S.-Jagdishpur, District- Bhojpur.
 3. Pappu Yadav Son of-Indradev Yadav Resident of-Gram- Roop Bandh, P.S.- Jagdishpur, District- Bhojpur.
 4. Jyotish Yadav Son - Indradev Yadav Resident of-Gram- Roop Bandh, P.S.- Jagdishpur, District- Bhojpur.
 5. Nandkishore Kumar S/O Rajendra Yadav Resident of-Gram- Roop Bandh, P.S.-Jagdishpur, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gupteshwar Kumar Son of-Lorik Yadav Resident of- Gram- Roop Bandh, P.S.-Jagdishpur, District - Bhojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Akanksha Malviya, Advocate Mr. Akash Keshav, Advocate Mr. Ayushman Kishore, Advocate Mr. Anuj Kumar Srivastava, Advocate Ms. Naina Nancy, Advocate
For the State	:	Mr. Chandra Bhushan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT

Date : 13-01-2026

Heard the learned counsel for the petitioners and
learned APP for the State.

2. The present application has been filed by the
petitioner seeking following relief(s):-

*“That this Criminal
Miscellaneous application is being filed
praying for quashing and setting aside of the*



Order dated 30.06.2025 passed in Sessions Trial Case No. 139 of 2021 titled State Vs. Vinod Kumar Yadav and Others (arising out of Jagdishpur P.S. Case No. 06 of 2020) by the Learned Additional Sessions Judge-XVII, Bhojpur at Ara whereby and whereunder the Learned Additional Sessions Judge-XVII, Bhojpur has been pleased to reject the application dated 05.07.2024 filed by the Petitioners herein, accused persons therein under Section 311 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as 'CrPC') mirrored as Section 348 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Hereinafter referred to as 'BNSS') to recall the Prosecution Witness No. 1 (Gupteshwar Kumar) and Prosecution Witness No. 4 (Tez Narayan Yadav) for further cross-examination."

3. Learned counsel for the petitioners submit that the petitioners of the present application are the accused persons in the ongoing Sessions Trial No. 139 of 2024. It has been submitted that upon registration of the FIR, being Jagdishpur P.S.



Case No. 06 of 2024, for offences under Sections 147, 148, 149, 307 and 302 of the Indian Penal Code and under Section 27 of the Arms Act, the police took up investigation and subsequently submitted charge-sheet. Thereafter, the Court of learned ACJM-VI took cognizance against the petitioners for the aforesaid offences on 11.09.2020. The charges were subsequently framed on 23.03.2022 for the offences under Sections 147, 148, 149, 302 and 307 of the Indian Penal Code and under Section 27 of the Arms Act.

4. Learned counsel for the petitioner submits that prior to filing of the present application, six prosecution witnesses were examined. The first prosecution witness, namely Gupteshwar Kumar, was examined and cross-examined on 19.12.2022, while prosecution witness no. 6, the doctor, namely, Dr. Tez Narayan Raj was examined on 11.03.2024. He further submits that upon review of the prosecution evidence, the learned counsel appearing on behalf of the accused persons realized that certain crucial aspects pertaining to the testimony of prosecution witness no. 1 and prosecution witness no. 4 remained inadequately addressed and which go to the very root of the prosecution case.

5. It has been submitted that the omissions were vital for testing the testimony, credibility of the prosecution



witnesses and for the ends of justice and fair play, it is essential to recall the witnesses. Accordingly, on 05.09.2024, the defence filed an application under Section 311 CrPC seeking further cross-examination of PW-1 and PW-4 along with a detailed questionnaire outlining the specific and material questions intended to be put to the witnesses.

6. Learned APP opposed the said application and after hearing the parties, the learned Trial Court, by the impugned order dated 30.06.2025, dismissed the application filed by the defence for recalling PW-1 and PW-4 for further cross-examination, holding that the application had been filed after a lapse of more than 18 months and that no cogent explanation had been offered as to why the questions were not asked earlier despite having sufficient opportunity to do so.

7. The learned Trial Court has further observed that in absence of any reasonable justification for the prior omission does not constitute a sufficient ground for recalling the witnesses. It has also been held that mere failure to properly cross-examine certain points does not constitute sufficient grounds for recalling the witnesses unless there is a change in circumstances or the discovery of a new fact that was previously unknown to the defence counsel.

8. Learned counsel for the petitioners submit that



the learned Trial Court has erred in dismissing the application on behalf of the petitioners for recalling the two prosecution witnesses, which has resulted in gross miscarriage of justice and violation of the fundamental right to fair trial guaranteed to the petitioners under Article 21 of the Constitution of India.

9. Learned counsel for the petitioners submit that the scope and object of Section 311 CrPC confers a wide discretionary power on the Court to summon or recall any witness at any stage if his evidence appears to be essential to the just decision of the case to ensure that failure of justice is not occasioned on account of mistake of either party in bringing valuable evidence on record.

10. It has further been submitted that the impugned order has dismissed the questionnaire of the defence in a perfunctory manner, merely stating that no cogent explanation has been offered as to why these questions were not asked earlier. However, the learned Trial Court was obligated to assess whether the proposed questions pertained to material facts and were necessary for a just adjudication.

11. It has also been contended that the learned Trial Court erred observing that proper cross-examination is not an objective test but rather a subjective one. The learned counsel submits that in fact, the test under Section 311 CrPC is an



objective test i.e., essential to the just decision of the case and the subjective satisfaction or failure of a counsel at an earlier stage is irrelevant, if the evidence is found to be essential.

12. Learned counsel for the petitioner has further pointed out that the observation of the learned Trial Court, that by such an application under Section 311 CrPC, the defence is trying to fill up lacuna is misplaced in the facts of the present case. In fact, the petitioner seeks further cross-examination of the witnesses to elicit truth by cross-examining on points earlier overlooked when such points were material and does not amount to filling up a lacuna.

13. Learned counsel contends that the learned Trial Court failed to consider the settled jurisprudential principles governing Section 311 CrPC as elucidated by the Hon'ble Supreme Court.

14. The learned counsel for the petitioners has relied on a few judgments in support of her submissions. In the case of **Varsha Garg v. The State of Madhya Pradesh & Ors.**, reported in **(2023) 19 SCC 646**, the Hon'ble Supreme Court has held that the reasoning of filling up of the lacunae of the prosecution case through an application under Section 311 of the CrPC cannot be an absolute bar for allowing an application under Section 311. The learned counsel refers to paragraph no. 44 of



the said judgment which reads as under:-

44. The right of the accused to a fair trial is constitutionally protected under Article 21. However, in *Mina Lalita Baruwa* [*Mina Lalita Baruwa v. State of Orissa*, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218] , while reiterating *Rajendra Prasad* [*Rajendra Prasad v. Narcotic Cell*, (1999) 6 SCC 110 : 1999 SCC (Cri) 1062] , the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in interest of justice. In *Rajendra Prasad* [*Rajendra Prasad v. Narcotic Cell*, (1999) 6 SCC 110 : 1999 SCC (Cri) 1062] , the Court had held that : (*Rajendra Prasad case* [*Rajendra Prasad v. Narcotic Cell*, (1999) 6 SCC 110 : 1999 SCC (Cri) 1062] , SCC p. 113, para 8)

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as



irreparable lacuna. **No party in a trial can be foreclosed from correcting errors. 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.** After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

(emphasis supplied)

15. Learned counsel for the petitioners further refers to paragraph nos. 50 and 51 of the said judgment wherein the wide ambit of Section 311 was taken into account which reads as under:

50. The Court while reiterating the principle enunciated in *Mohanlal Shamji Soni* [*Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595] stressed upon the wide ambit of Section 311 which allows the power to be



exercised at any stage and held that : (*Zahira Habibulla H. Sheikh case* [*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , SCC p. 189, para 44)

“44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. : (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In *Mohanlal Shamji Soni v. Union of India* [*Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595] this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, “any court”, “at any stage”, or “any enquiry or trial or other



proceedings”, “any person” and “any such person” clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code.

The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is



examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

51. While reiterating the decisions of this Court in *Karnel Singh v. State of M.P.* [*Karnel Singh v. State of M.P.*, (1995) 5 SCC 518 : 1995 SCC (Cri) 977] , *Paras Yadav v. State of Bihar* [*Paras Yadav v. State of Bihar*, (1999) 2 SCC 126 : 1999 SCC (Cri) 104] , *Ram Bihari Yadav v. State of Bihar* [*Ram Bihari Yadav v. State of Bihar*, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085] and *Amar Singh v. Balwinder Singh* [*Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518 : 2003 SCC (Cri) 641] this Court held that the court may interfere even at the stage of appeal
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16. While referring to one order passed by the learned Single Judge Bench of the High Court of Andhra Pradesh, Amravathi passed in Criminal Petition No. 4390 of 2022, the learned counsel for the petitioners relies upon



paragraph no. 12 of the said judgment which has taken into account the principle laid down by the Hon'ble Supreme Court in the case of **AG v. Shiv Kumar Yadav and Others, AIR 2015 SC 3501**. The referred paragraph no. 12 is reproduced herein:

“12. This Court is of the considered opinion that the above said decision aptly applies to the facts of the present case. At this juncture, it may be appropriate to refer to some of the principles laid down by the Hon'ble Supreme Court in **AG v. Shiv Kumar Yadav** (AIR 2015 SC 3501) and Others which are to be kept in mind for exercising power under Section 311 Cr.P.C., and the relevant to the present context are:

a) The exercise of widest discretionary power Under Section 311 Code of Criminal Procedure should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated;

b) The wide discretionary power should be exercised judiciously and not arbitrarily;



c) The object of Section 311 of Code of Civil Procedure simultaneously imposes a duty on the court to determine the truth and to render a just decision. ”

17. In support of her submissions, the learned counsel further refers to a judgment passed by the Hon’ble Supreme Court in **State of T.N. v. N. Seenivasagan, (2021) 14 SCC 1** and points out paragraph nos. 12 and 13 of the said judgment which primarily talks about the fact that an application under Section 311 CrPC can be entertained at any stage of the trial and the cardinal principle to arrive at a just decision should be borne in mind. The relevant paragraph nos. 12 and 13 which have been relied on by the learned counsel for the petitioners are reproduced herein:

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, 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”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.

13. In *Manju Devi v. State of Rajasthan* [*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 the 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”.



18. Learned counsel thus submits that the Hon'ble Supreme Court has authoritatively held that a criminal trial does not attain finality until the pronouncement of the final judgment or order of acquittal/conviction and until that definitive point, the trial remains alive and ongoing proceeding and the court retains a continuous duty to arrive at the truth and ensure a just decision.

19. Learned APP for the State, on the other hand, contends that from the petitioner's own statement it would be evident that PW-1 was examined on 19.12.2022, while PW-4 was examined on 13.03.2023, whereas the application for recalling the said witnesses was filed after more than 18 months and 16 months respectively. Learned APP further submits that from mere perusal of the application filed under Section 311 CrPC, it is evident that in paragraph no. 1 the petitioners themselves have stated that on some points the defence could not properly cross-examine PW-1 and PW-4. It has been submitted that from their own admission it clearly shows that they had not properly asked the questions during the cross-examination and therefore merely to enable them to put certain questions again at such a belated stage amount to filling up of the lacuna and therefore the learned Trial Court had rightly rejected the application under Section 311 CrPC.

20. Learned APP further submits that an



application under Section 311 CrPC must not be allowed to fill up lacuna in the prosecution case or in the defence case or to give an unfair advantage to either party. Learned APP for the State further submits that the Hon'ble Supreme Court in **Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328**, has observed in paragraph nos. 11 and 12 which are reproduced herein:

“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.

12. Where the prosecution



evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

21. It has thus been submitted that the present application has also been filed at a belated stage and there has been no reasoning given whatsoever as to why the application was not filed earlier. In the present case, the PW-1 was examined on 19.12.2022 while PW-4 was examined on 13.03.2023. An application for the recall was filed on 05.07.2024. It has thus been submitted that the present application is misconceived and there is no illegality in the impugned order passed by the learned Trial Court and the present application is fit to be dismissed *in limine*.

22. Having heard the learned counsel for the parties and also perused the various annexures brought on record, specifically the deposition of the relevant witnesses and the application made under section 311 CrPC by the petitioners



before the learned Trial Court, it transpires that as a matter of fact, the PW-1 was examined on 19.12.2022 while PW-4 was examined on 13.03.2023. I also find that PW-1 was extensively cross-examined on behalf of all the accused persons while PW-4 was also cross-examined by all the accused persons on the relevant dates. It is also observed that the petitioners waited for six prosecution witnesses to be examined and only after 16 months of the examination of PW-4, an application under section 311 CrPC was filed to recall PW-1 and PW-4 for further cross-examination as certain questions were not put to them and they were not examined properly.

23. The application filed under section 311 by the petitioners before the learned Trial Court in paragraph no. 1 reads as under:

“1. That aforementioned Pws examined by the prosecution and cross examination by the defence but on the some points they couldn't cross examined properly.”

24. From the perusal of the same, it is evident that the petitioners admit to the fact that certain questions on some points could not be put during the cross-examination which in my opinion amounts to filling up the lacuna as an application under section 311 CrPC cannot be entertained solely because the



defence failed to put certain questions in the earlier examination of witnesses. It is a settled law that Courts exercise this power judiciously only when recalling the witness is essential for a just decision and not to remedy the defence's own negligence and laches. It is not the purport of section 311 CrPC that mere submission that some questions could not be put to the prosecution witnesses during their lengthy cross-examination, cannot be a ground to recall a witness who has been already examined and cross-examined fully. In the opinion of the court, an application under Section 311 CrPC cannot be allowed to fill the lacuna of prosecution and defence case and no prosecution witness be called for examinations/ cross-examination merely because certain questions were not put to him properly on some points.

25. At this juncture, reference may be made to the judgment of the Hon'ble Supreme Court in the case of **State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402**, wherein it has been held that **“discretion given to court for recalling a witness to be exercised judiciously to prevent failure of justice. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how fairness to trial suffered without recall.”**



26. This court also finds that there is no reason assigned for the delay in moving the application and only a statement that their cross-examination is necessary for the ends of justice and fair play does not entitle the petitioners to recall the aforecited two witnesses only because they missed out on certain query to be put to them. To the understanding of this court, allowing such application would amount to giving an unfair advantage to the defence side to allow them to put questions to witnesses which they had missed on the previous occasion during their cross-examination of the prosecution witnesses.

27. On perusal of the questionnaire, it is also clear that these questions could have been put to the witnesses at the relevant time and there is no change of circumstance under which such questionnaires were prepared and the witnesses needed to be recalled and moreover the defence through such questions would take undue advantage of falsifying the other witnesses.

28. It is settled position of law that an opportunity of fair trial has to be given to the accused but it should also be taken into account that no parties can be permitted to fill up the lacuna by moving an application that some questions could not be put to certain prosecution witnesses during their cross-examination. The learned trial court was correct in observing that if such applications are allowed it would become an unending



process and thus delay the trial. In such circumstances, the petitioners have not been able to show any illegality in the impugned order passed by the learned trial court.

29. In view of the aforesaid discussions, this court do not find any error in the impugned order and therefore I am not inclined to interfere with the same.

30. Accordingly, the present application invoking the inherent jurisdiction of this Hon’ble High Court under Section 482 CrPC is *sans* merit and hence dismissed.

(Sourendra Pandey, J)

Aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.01.2026.
Transmission Date	

