

12.06.2026

Serial no. 24

[Srimanta]

Ct. No. - 29

CRR 1036 of 2026

In re : An Application under Sections 482 of the Code of Criminal Procedure, 1973 corresponding to Section 528 of the Bharatiya Nagarik Sureaksha Sanhita, 2023

-And-

In the matter of : BIJAY KUMAR SARKAR

... .. Petitioner

Mr. Arnab Mukherjee

Mr. Hiranmoy Debnath, Advocates

... .. For the Petitioner.

1. Petitioner herein is aggrieved with the order dated 18.11.2025 passed in Misc. Case No. 11/2018 by which the Court below has allowed the opposite party/wife's prayer for recalling the P.W. 1. Learned Court below by the impugned order observed that the wife/opposite party herein due to inadvertence could not mention certain facts in her examination-in-chief and as such he allowed the prayer for re-examination of P.W.1.
2. Being aggrieved by the aforesaid order, learned Counsel for the petitioner submits that the order impugned has been passed mechanically without considering and appreciating the true and actual state of affairs. He further submits that on 3rd January, 2024 petitioner/husband had made a prayer to recall P.W. 1 to cross-examine on the point of age of the elder son which was allowed by the

Court below. After taking several adjournments, the wife on 17.03.2025 filed the instant petition where she has failed to point out on what issue she wants to re-examine the witness. Therefore, the prayer made by the wife/opposite party is vague, which ought not to have been allowed by the Court below. It was not discussed in the order whether re-examination of P.W.1 is essential to take just decision of the case or not.

3. Having considered submissions made on behalf of the petitioner and also considering that the order which is proposed to be passed by this Court will not cause prejudice to the opposite party, the service of copy of application upon the opposite party is dispensed with.
4. On perusal of the application for recalling P.W. 1 filed by the opposite party herein, it is clear that she has not mentioned in her application which facts she has missed to mention while she was examined as P.W.1 and it further appears that the Court below without considering as to what are the facts she has allegedly not stated in her earlier evidence, has allowed the prayer mechanically and without considering as to whether such recalling of witness is at all required for adjudication of the controversy between the parties. Therefore, the order impugned suffers from perversity and it requires interference by this

Court invoking this Court's jurisdiction under Section 528 of the BNSS.

5. In view of above, CRR/1036/2026 is allowed.
6. The impugned order dated 18.11.2025 passed in Misc. Case No. 11/2018 is hereby set aside. However, liberty is given to the opposite party/wife to make a fresh application, if required, disclosing the facts which she wants to adduce by recalling herself by way of reexamination within a period of 30 days from the date of communication of this order. In the event of making such prayer disclosing details of questions she wants to put herself by way of re-examination, the Court below will give opportunity to the petitioner/husband to file written objection and, thereafter, he will dispose of the prayer for reexamination of P.W. 1 preferably within a period of three months thereafter.

(Dr. Ajoy Kumar Mukherjee, J.)