CGHC010160702026 2026:CGHC:43640

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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 1196 of 2026

Narendra Savra S/o Naagmat Savra Aged About 26 Years R/o Ward No. 8, Near Shiv Chowk, Nayapara, Police Station And District- Mahasamund (C.G.) Present Address - Dhangat Chowk, Near Siddharth Chowk, Tikrapara, Raipur, (Residing As A Tenant In Ved Prakash Pachauris House) District- Raipur (C.G.)

... Petitioner(s)

versus

State Of Chhattisgarh Through Station House Officer- Mahasamund, District- Mahasamund (C.G.)

... Respondent(s)

For Petitioner	:	Mr. Pawan Kesharwani, Advocate
For State	:	Mr. Sumit Singh, Dy. Advocate General

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order On Board

07/10/2026

1. This Criminal Miscellaneous Petition has been filed by the petitioner questioning the legality and validity of the order dated 15.04.2026 passed by learned Additional Sessions Judge (FTC), Mahasamund in Sessions Case No.28 of 2024, whereby the application preferred by the petitioner under Section 311 of the Code of Criminal Procedure, 1973 (for short, “the Cr.P.C.”) seeking recall of the victim

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for further cross-examination has been rejected.

2. Learned counsel for the petitioner would submit that the petitioner is facing trial under Section 376 (2) (n) of IPC. After lodging of report, statement of victim under Section 164 Cr.P.C. was also recorded wherein she had stated that physical relations between the two is with her consent. However, during the time of examination and cross-examination of victim, statement recorded under Section 164 Cr.P.C. could not be marked and exhibited as document and therefore at the time of final hearing, it may not be read into/looked into, else it will adversely affect rights of the petitioner/accused to fair trial. He also contended that in the application filed under Section 311 of Cr.P.C., other grounds were also mentioned for re-calling of victim as no question was put to victim on the contents of FIR. Therefore, impugned order may be set aside and the victim may be directed to be recalled for further cross-examination. In support of his submission, he places reliance upon the decision of Hon'ble Supreme Court in case of **Satbir Singh Vs. State of Haryana and Ors**. reported in **2023 SCC OnLine SC 1086** .

3. Per contra, learned counsel for the State would oppose the submission of learned counsel for the petitioner and would submit that in the garb of provision under Section 311 Cr.P.C., recalling of witness to fill the lacuna is not permissible. In support of his submission he places reliance upon the decision of Hon'ble Supreme Court in case of **The State of Tripura Vs. Panna Ahmed** (Criminal Appeal No.2848 of 2026, decided on 26th May 2026).

4. I have heard learned counsel for the parties and also perused the records of the case.

5. Before considering the rival submissions made by learned counsel for respective parties, it would be apposite to refer to the provisions contained in Section 311 of Cr.P.C. which deals with the power of the Court to summon a material witness or recall and re-examine a witness already examined. The said provision empowers the Court, at any stage of an inquiry, trial or other proceeding, to summon any person as a witness, examine any person in attendance, though not summoned as a witness, or recall and re-examine a person already examined. The provision further mandates exercise of such power where the evidence of such person appears to the Court to be essential to the just decision of the case.

6. Thus, though the power conferred under Section 311 of the Cr.P.C. is wide, the same is required to be exercised judiciously and upon consideration of the facts and circumstances of each case. The object of the provision is to enable the Court to arrive at a just decision and not to provide a party with an opportunity to fill up omissions or lacunae in its case after having availed the opportunity of examining or cross-examining a witness.

7. Admittedly, the petitioner herein is facing trial as an accused in Sessions Case No.28 of 2024 for alleged commission of offence under Section 376 (2) (n) of IPC.

8. In case of **Natasha Singh Vs. C.B.I. (State**) reported in **(2013) 5 SCC 741**, Hon'ble Supreme Court dealt with the scope of discretionary power of Section 311 Cr.P.C. and observed as under :

> **"15.** The scope and object of the provision is to enable the court to determine the truth and to render

a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to *cause serious prejudice* to the defence of the accused, or to give an *unfair advantage to the opposite party*. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC 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 great caution and circumspection. The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.”

9. In case of **Vijay Kumar Vs. State of Uttar Pradesh & Anr.** reported in **(2011) 8 SCC 136**, Hon'ble Supreme Court observed thus:

> **"14.** There is no manner of doubt that the power under Section 311 of Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that power under Section 311 should be exercised for the just decision of the case. The wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. As is provided in the Section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for just decision of the case.**"**

10. In the present case, the petitioner is not seeking an unrestricted or *de novo* cross-examination of the victim. His grievance is confined to the fact that the victim was not confronted with her statement recorded under Section 164 of Cr.P.C., particularly with regard to the assertion made therein concerning the consensual nature of the physical relationship, nor document is exhibited. It is true that a statement recorded under Section 164 of the Cr.P.C. does not, by

itself, constitute substantive evidence of the facts stated therein. However, subject to the applicable provisions of law governing proof and contradiction, such previous statement may be relevant for the purpose of testing the consistency and credibility of its maker. The right of an accused to effectively cross-examine a material prosecution witness is an essential facet of a fair trial, and an opportunity to confront the victim with her previous statement, where such statement has a material bearing on the controversy involved, cannot be denied merely on the ground that the witness has already been examined and cross-examined.

11. It is also significant that the petitioner does not seek to introduce a new document into the proceedings or to set up a wholly new defence. The statement under Section 164 Cr.P.C. is admittedly already part of the investigation/trial record. The proposed recall is essentially intended to afford the petitioner an opportunity to confront the maker of that statement and to have the evidentiary position tested in accordance with law.

12. In these circumstances, the omission to put the relevant portion of the statement to the victim cannot, at this stage, be treated as an attempt to manufacture a defence or to introduce an entirely new case. The Court has to balance the competing considerations of expeditious conclusion of trial and the accused's right to a meaningful opportunity to defend himself.

13. The expression “lacuna” cannot be understood to mean every omission or inadvertent failure on the part of the defence. A distinction has to be maintained between a case where a party

seeks recall merely because the earlier cross-examination was inadequate or because a better line of defence has subsequently occurred to it, and a case where an omission concerns material evidence having a direct bearing upon the central issue in the trial and its consideration is necessary to arrive at a just decision.

14. This Court is also conscious that the victim should not be subjected to repeated and unnecessary appearances or cross-examination. The apprehension expressed by the State in this regard can adequately be addressed by imposing appropriate conditions. The recall shall, therefore, be limited in scope and shall not be treated as an opportunity for the petitioner to conduct a fresh or exhaustive cross-examination.

15. Hon'ble Supreme Court in case of **Satbir Singh** (supra), after considering the scope of Section 311 of the Cr.P.C., allowed recall of a witness where the material sought to be brought on record was relevant to the just decision of the case and the opposite party could be protected from prejudice.

16. In view of the aforesaid discussions, judgment of Hon'ble Supreme Court as referred to above, this Court is of the considered opinion that the proposed limited recall of the victim is necessary for the just decision of the case and that refusal to permit such opportunity may result in prejudice to the petitioner in effectively testing the prosecution evidence.

17. Consequently, the petition is hereby **allowed**. The order dated 15.04.2026 passed by the learned Additional Sessions Judge

(FTC), Mahasamund in Sessions Case No.28 of 2024 is hereby set aside.

18. The application filed by the petitioner under Section 311 of Cr.P.C. is allowed in part to limited extent. The victim/prosecutrix shall be recalled for the limited purpose of confronting her with her statement recorded under Section 164 of Cr.P.C. by marking/exhibiting the said document as per law, as are necessary for a just and effective cross-examination.

19. It is made clear that the petitioner/accused shall not be entitled to reopen the entire cross-examination of the victim/prosecutrix or to put questions wholly unrelated to the aforesaid purpose. The learned trial Court shall regulate the cross-examination accordingly.

20. It is clarified that this Court has not expressed any opinion on the merits of the prosecution case or the defence of the petitioner. Learned trial Court shall decide the case independently on the basis of the evidence available on record.

Sd/-
(Parth Prateem Sahu)
Judge

Praveen