



**105 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRR-573-2023 (O&M)**

**Date of Decision:09.04.2026**

Kanta

...Petitioner

Vs.

State of Haryana and Ors.

...Respondents

**Coram : Hon'ble Mr. Justice N.S.Shekhawat**

Present : Mr. Mohit Khatkar, Advocate for  
Mr. Rahul Deswal, Advocate  
for the petitioner.

Mr. Rajiv Sidhu, Sr.DAG, Haryana.

Mr. Rakesh Nehra, Sr. Advocate with  
Mr. Reetesh Kumar, Advocate  
for respondents No.2 and 4.

Mr. Dushyant Godara, Advocate for  
Mr.Vivek Suri, Advocate  
for respondent No.3.

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**N.S.Shekhawat J. (Oral)**

1. The petitioner has filed the present revision petition against the impugned order dated 01.02.2023 passed by the Court of Additional Sessions Judge, Jhajjar, whereby, the application for further examination of PW-1 Kanta, PW-3 Subhash and PW-4 Suresh was allowed by the Trial Court, in a case arising out of FIR No.219, dated 28.06.2015, under Sections 323,341,307,120-B of IPC, Police Station Beri.

2. Learned counsel for the petitioner contends that the petitioner had got registered the abovementioned F.I.R (Annexure P-1) against the respondents under Sections 323, 341, 307 and 120-B of IPC. After the investigation, the challan was presented before the Court of Area Magistrate on

23.09.2015 against the respondents No.2 to 4/accused. Thereafter, the charge was ordered to be framed by the Trial Court against the respondents No.2 to 4/accused under Sections 323,341,307 and 120-B of IPC. On 01.05.2017, PW-1 Kanta was examined and cross-examined on 08.05.2017 (Annexure P-3). Thereafter, PW-3 Subhash and PW-4 Suresh appeared on 15.05.2017 and their statements (Annexure P-4 & Annexure P-5), were recorded. After examining all the witnesses, the prosecution evidence was closed on 07.02.2019 and the case was fixed for recording of the statement of the accused under Section 313 Cr.P.C. The respondents/accused had taken four adjournments to get their statement recorded under Section 313 Cr.P.C. Thereafter, the case was listed for defence evidence and the defence counsel had taken 23 dates to conclude the evidence, which is evident from the zimni orders (Annexure P-6). Thereafter on 29.11.2021, the respondent No.2 moved an application before the Trial Court for further cross-examination of PW-1 Kanta, PW-3 Subhash and PW-4 Suresh. This application was moved by the prosecution after a period of more than four years and six months of recording the last deposition of PW-4. Even, a ground taken in the said application was that 03 PWs had not been cross-examined by the defence counsel effectively or knowingly, in connivance with the complainant and only formal cross-examination was done. The copy of said application dated 29.11.2021 was annexed as (Annexure P-7).

3.            On the other hand learned counsel appearing on behalf of respondents No.2 to 4 submitted that the application had been correctly allowed by the Trial Court as the said witnesses were not effectively cross-examined. Moreover, the impugned order does not cause any prejudice to the prosecution and the petition deserves to be dismissed by this Court.

4. I have heard learned counsel for the parties and perused the record carefully.

5. In the present case, it is apparent from the Annexures (P-3 to P-5) that PW-1 Kanta, PW-3 Subhash and PW-4 Suresh were duly cross-examined by the learned defence counsel. Even, the defence counsel had put all the required documents to these three witnesses and the witnesses were cross-examined at length. Thereafter, the case remained listed for recording of statement under Section 313 Cr.P.C on four dates. Thereafter, the defence counsel had taken 23 dates to conclude the defence evidence. Consequently, at this belated stage, the prayer made by the accused persons to recall the said three witnesses for further cross-examination was totally misconceived.

6. Even otherwise, Section 311 Cr.P.C 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 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.”

7. Section 311 Cr.P.C., empowers the Court to call any person or a witness at any stage of enquiry, trial or other proceedings in order to reach to the just decision of the case. The powers conferred under Section 311 Cr.P.C are wide and thus need to be exercised judiciously with extra care and caution for arriving at just decision of the case. Further, it must be borne in mind that in case such power is exercised in arbitrary manner, it will cause an undue delay in

trial and hardship to the opposite party.

8. The Delhi High Court in the matter of “M/s Kurian Energiekanri India Pvt. Ltd. and Anr. Vs. State of NCT of Delhi and Ors, decided on 24.11.2022” wherein, it was observed that:-

*“9.Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined.”*

*10. Further, it was held by Hon'ble Supreme Court in Shiv Kumar (Supra) that mere incompetence or change of counsel cannot be ground for recall of witness under Section 311 Cr.P.C. and that it is not only matter of delay but also of harassment for witnesses to be recalled which could not be justified. The power given is to be exercised cautiously. In the present case, the cross examination conducted by*

*counsel on behalf of petitioner No. 2 was extensive and thus needs no reconsideration.*

*11.The contents of case of Zahira Habibullah Sheikh and Anr. v. State of Gujarat &Ors. (2004) 4 SCC 158, as relied by learned counsel for the petitioner do not apply to the facts of the present case and it was observed by Hon'ble Apex Court that Courts while exercising the power under section 311 Cr.P.C.:-*

*"It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."*

9. Now, coming to the facts of the present case, it is apparent that PW-1 Kanta, PW-3 Subhash and PW-4 Suresh were examined by the Trial Court about 4/5 years ago. Even, from a perusal of their testimonies, the said witnesses were cross-examined in detail by the learned defence counsel. Now, such witnesses cannot be re-called for cross-examination on the ground of change of a counsel, during the course of trial. Even, this Court would not be in a position to comment on the conduct of earlier counsel as evidence of the witnesses has to be appreciated by the Trial Court only, during the course of trial. Even, the application in question has been filed by the accused after several years and no reason has been assigned for the delay in making the application. Even, it is equally possible that the witnesses had been won over and the parties can never be allowed to collude the process of justice in any manner.

10. Thus, in view of above discussion, the present petition is allowed and the impugned order dated 01.02.2023, passed by the Court of Additional Sessions Judge, Jhajjar is set aside.

11. Pending application(s), if any, stand(s), disposed of, accordingly.

09.04.2026  
hitesh

(N.S.SHEKHAWAT)  
JUDGE

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|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |