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

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Mandeep Kumar @ Meesha

...Petitioner

V/s

State of Punjab

...Respondent

Date of decision: 11.03.2026**Date of Uploading : 12.03.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Parvinder Singh, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed by the petitioner under Section 528 of BNSS invoking the inherent jurisdiction of this Court for setting aside the order dated 29.09.2025 passed by the learned Judicial Magistrate First Class, Garhshankar, whereby the application filed by the petitioner under Section 311 of Cr.P.C., 1973 seeking recall of PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh, Investigating Officer, for limited cross-examination was dismissed.

2. Learned counsel for the petitioner has iterated that the impugned order passed by the Court below dismissing the application in hand is legally unsustainable and has resulted in grave prejudice to the defence of the petitioner. Learned counsel has further iterated that during the course of trial, PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh, the Investigating Officer, were examined and cross-examined. However, due to

inadvertence on the part of the earlier counsel representing the petitioner,

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certain material questions relating to the site plan (Ex. PW-4/E) have not been put to these witnesses. According to learned counsel, the said site plan is an important and determinative factor to ensure fair adjudication of the trial. Learned counsel has further contended that the motive behind moving the application in hand is neither to delay the proceedings nor to fill any lacuna but solely to bring out the truth. It has been further submitted that after the petitioner has engaged a new counsel, it came to light that the site plan contained material inconsistencies and factual deviations which were never tested during cross-examination. Learned counsel has emphasized that immediately after noticing the omission, the petitioner has approached the Court below and sought permission to recall the aforesaid witnesses so that the factual matrix of the case could be properly clarified before the Court. Learned counsel has further contended that the proposed cross-examination is strictly limited in scope and would not cause any prejudice to the prosecution. It has been further submitted that the Court below has dismissed the application in hand on the erroneous assumption that once a witness has been cross-examined and the prosecution evidence has been closed, the witness cannot be recalled. According to learned counsel, such reasoning is contrary to the settled legal position governing Section 311 Cr.P.C., which empowers the Court to summon or recall any witness at any stage of the proceedings if such recall appears to be essential for a just decision of the case. Learned counsel has further emphasized that Section 311 Cr.P.C. embodies a legislative mandate that no valuable evidence should remain excluded due to inadvertence, mistake or ambiguity in the testimony of witnesses. It has been further asserted that the impugned order



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has been passed without proper application of mind and does not consider whether the proposed recall was necessary for the just adjudication of the case. Learned counsel has further submitted that the Court below has merely relied upon procedural considerations such as closure of prosecution evidence and recording of the statement under Section 313 Cr.P.C., which cannot curtail the wide discretionary powers vested in the Court under Section 311 Cr.P.C. On the strength of aforesaid submissions, it is prayed that the impugned order passed by the Court below be set aside and the application in hand be allowed in the interest of justice.

3. *Per contra*, learned State counsel (on the strength of advance notice), has opposed the petition in hand and has submitted that the impugned order has been passed after proper appreciation of the facts and circumstances of the case. Learned State counsel has iterated that the Court below has rightly exercised its discretion in dismissing the application filed by the petitioner under Section 311 Cr.P.C. Learned State counsel has further contended that during the course of investigation, the complainant has suffered a supplementary statement in which the petitioner (herein) was specifically named as an accused in the case. On the basis of the said statement and other material collected during investigation, the petitioner has been nominated as an accused and was arrested on 09.06.2021. It is further submitted that the petitioner has made a disclosure statement admitting his involvement in the commission of the offences alleged in the FIR. Learned State counsel has further submitted that after completion of the investigation, the final report Section 173 of Cr.P.C. has been presented before the competent Court of jurisdiction on 28.09.2021 and the charges



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were framed thereafter. According to learned State counsel, the trial proceeded thereafter in accordance with law and the prosecution has led its evidence. During the course of trial, PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh, the Investigating Officer, were duly examined and were fully cross-examined by the counsel representing the petitioner and the prosecution evidence was closed on 28.11.2024. Thereafter the statement of the accused under Section 313 Cr.P.C. was recorded. At this advanced stage of the proceedings, the petitioner has moved the application in hand seeking recall of the aforesaid witnesses for further cross-examination. According to learned State, such an application is clearly an attempt to delay the proceedings and reopen issues which have already been concluded during trial. Learned State counsel has emphasized that once a witness has been examined and cross-examined at length and the prosecution evidence has been closed, the recall of such witness should not be permitted unless there exist exceptional circumstances. Accordingly, a prayer has been made for the dismissal of the instant petition.

4. I have heard learned counsel for the petitioners and have perused the available record.

5. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; relevant whereof reads as under:-

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:

(i) The prime factor for considering a plea under Section 311 of Cr.,P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”



- (ii) *Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.*
- (iii) *Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.*
- (iv) *A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.*
- (v) *A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.*
- (vi) *Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.*
- (II) *No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances. It is neither possible nor pragmatic to lay down any such exhaustive guide-lines as every case is sui generis in terms of factual conspectus.*
- (III) *Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”*

6. The record reflects that the FIR in the present case was registered initially against an unknown person regarding the death of one Iqbal Singh allegedly caused due to rash and negligent driving of a motorcycle. During the course of investigation, the complainant made a supplementary statement wherein the present petitioner was nominated as an accused and was subsequently arrested on 09.06.2021 and later released on bail. After the completion of investigation, the final report under Section 173 Cr.P.C. has been presented before the competent Court of jurisdiction on 28.09.2021. Thereafter, the charges were framed and the matter

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proceeded to prosecution evidence. During the course of trial, PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh, the Investigating Officer, were examined and cross-examined. Accordingly, the prosecution evidence was closed on 28.11.2024 and thereafter the statement of the accused under Section 313 Cr.P.C. was recorded on 03.12.2024. It is borne out from the record that subsequently, the petitioner has engaged a new counsel who, upon examining the record of the case, noticed that certain material questions relating to the site plan (Ex. PW-4/E) has not been put to the aforesaid witnesses during cross-examination and filed the application in hand under Section 311 Cr.P.C. seeking recall of the aforesaid witnesses for limited cross-examination only to the aspects relating to the site plan. The application in hand has been opposed by the prosecution on the ground that both the witnesses have already been cross-examined; the prosecution evidence has been closed & the statement under Section 313 Cr.P.C. has already been recorded. Furthermore, it has been contended that the change of counsel or inadvertence of earlier counsel cannot be a ground to recall the aforesaid witnesses. Considering the rival contentions and the available record, the Court below dismissed the application in hand by observing that once a witness has been cross-examined and the prosecution evidence has been closed, recall of the witness cannot be permitted merely because the defence counsel failed to put certain questions earlier. It is in this factual backdrop that the impugned order has been passed by the Court below.

7. The factual conspectus of the matter in hand reflects that in the case in hand, the petitioner has sought recalling of PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh for a limited purpose only i.e. to confront them

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with the site plan (Ex. PW-4/E) & to clarify certain aspects relating to the place of occurrence and the relative positions of the parties involved in the accident. From the factual matrix of the case, it appears that the site plan is a crucial piece of evidence in cases involving allegations of rash and negligent driving. This aspect assumes more importance in the present case as any discrepancy between the oral testimony of witnesses and the site plan may have a material bearing on the determination of culpability. Moreover, the petitioner has explained that due to inadvertence on the part of his earlier counsel, the witnesses in question have not been confronted with the site plan during cross-examination. Furthermore, the petitioner has filed the application in hand soon after the engagement of a new counsel and before the commencement of defence evidence. Therefore, it cannot be said that the application in hand has been filed with the intention of delaying the proceedings. In the considered opinion of this Court, the Court below has rejected the application in hand mainly on the ground that the witnesses in question have already been cross-examined and the prosecution evidence had been closed. It is a trite law that Section 311 of Cr.P.C. confers very wide powers upon the Court to summon any person as a witness, examine any person present in Court or recall and re-examine any witness already examined at any stage of trial or other proceeding if such evidence appears to be essential for a just decision of the case. The object of the provision is to enable the Court to discover the truth and render a just decision by ensuring that all relevant facts are brought before the Court. In the considered opinion of this Court, the provision clearly reflects that the power of recall can be exercised at any stage of the proceedings and the



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only test which the Court is required to apply is whether the evidence sought to be brought on record is necessary for the just decision of the case. Thus, the requirement of “*essential for just decision*” under Section 311 Cr.P.C. is established in the case in hand. Furthermore, the valuable right of accused to establish his defence by leading evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. In the instant case, prejudice would indeed be caused to petitioner herein, unless afforded an effective opportunity to cross-examine PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh, Investigating Officer.

8. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, this Court deems it appropriate to grant one effective opportunity to petitioner to cross-examine PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh, Investigating Officer. Accordingly, the present petition is allowed and the impugned order dated 29.09.2025 passed by the Judicial Magistrate First Class, Garhshankar, dismissing the application dated 15.01.2025 filed by the petitioner under Section 311 Cr.P.C., is set aside & the Court below is directed to afford one clear effective opportunity to petitioner for cross-examine PW-2 Harjinder Kaur and PW-4 SI Bikramjit Singh, Investigating Officer. The said witnesses shall be recalled by the Court below for limited cross-examination only with respect to the site plan (Ex. PW-4/E) and related aspects. This shall, however, be subject to payment of Rs.5,000/- as costs to be paid to the District Legal Services Authority, Hoshiarpur, Punjab. The payment of costs, shall be a condition precedent, for allowing cross-examination of PW-



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2 Harjinder Kaur and PW-4 SI Bikramjit Singh, Investigating Officer as directed hereinabove.

9. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

March 11, 2026
Ajay

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