



\$~131

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 6767/2025

POONAM @ POOJA @ PRIYA

.....Petitioner

Through: Mr. Kanhaiya Singhal, Ms. Avantika Shankar, Ms. Prasanna, Mr. Ajay & Ms Snatakshi Singh, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Manjeet Arya, APP for State.
SI Akash Deep, PS Civil Lines.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

13.05.2026

1. By way of this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], the petitioner seeks an opportunity to re-examine Ms. Shanti Devi, the complainant in the case, who has given evidence as PW-1, in proceedings arising out of FIR No. 495/2021, dated 23.12.2021, under Sections 306/34 of the Indian Penal Code, 1860 ["IPC"], registered at Police Station Civil Lines, Delhi.
2. Notice was issued in this petition on 22.09.2025, and by order dated 11.05.2026, the Investigating Officer ["IO"] was directed to inform the witness regarding the pendency of the present petition so that she may be represented on the next date of hearing, if she so wishes. Ms. Manjeet Arya, learned Additional Public Prosecutor, has handed over to the Court a communication dated 12.05.2026 issued to Ms. Shanti Devi. The



communication bears her acknowledgment dated 12.05.2026. The said communication is taken on record. Ms. Arya also states, upon instructions from the IO, that he was informed by Ms. Shanti Devi that she will be represented by counsel, who also provided the name and telephone number of the counsel. The case has been passed over twice to enable her counsel to appear. Both, the IO and Mr. Kanhaiya Singhal, learned counsel for the petitioner, state that they have made an attempt to contact the counsel in the interregnum. Despite the aforesaid efforts, there is no appearance on behalf of the complainant.

3. The case pertains to FIR No. 495/2021, lodged at P.S. Civil Lines, Delhi, under Sections 306/34 of IPC. The petitioner is one of the accused in the case. Charges were framed on 21.12.2022. Charges have also been framed *qua* another accused under Section 174A of IPC.

4. After the complainant was summoned for her evidence, several dates of hearing have been fixed by the Trial Court. The order sheets placed on record by the petitioner reveal the following chronology of events:

- a. On 10.03.2023, the complainant was not present for recording of her statement, as she was not well.
- b. On 25.05.2023, although the complainant was present, it was again submitted that she was not well and was discharged unexamined.
- c. On 12.09.2023, a similar request was made on behalf of the complainant, again on the ground that she was not well.
- d. On 18.01.2024, once again an adjournment was sought on behalf of the complainant on the ground that she was not well.
- e. On 08.05.2024, the complainant was examined-in-chief in part.



- f. It appears that thereafter the matter was listed on 04.09.2024 for prosecution evidence, and the complainant was summoned to appear on the said date of hearing.
 - g. On 09.04.2025, the complainant was further examined-in-chief, but an adjournment was sought on behalf of the petitioner due to indisposition of main counsel. Considering that the complainant is a senior citizen, the cross-examination was closed.
 - h. Upon an application being filed under Section 311 of Code of Criminal Procedure, 1973 [“CrPC”], the witness was recalled by order dated 04.06.2025.
 - i. By order dated 13.08.2025, the petitioner’s right to cross-examine was again closed, recording that the main counsel for the petitioner was not available as he was busy in some other court.
5. The petitioner thereafter moved another application under Section 311 of CrPC, in which it was stated as follows:

“4. That the present matter was listed on 13.08.2025 for cross-examination of PW-1 as well as examination of other witnesses. However, counsel for accused person was stuck in traffic as on 13.08.2025, there was a Full Dress Rehearsal from India Gate to Red Fort and roads were blocked by the security personals and some of the roads which were operational, were having heavy traffic. Therefore, counsel for accused persons could reach to this Hon’ble Court only at 11:15Am, however, by the said time, this Hon’ble Court has closed the opportunity of cross-examination of PW-1.

5. It is submitted that delay in reaching to this Hon’ble Court was on account of wholly Bonafide reasons and certainly beyond the reasonable control of the counsel. The counsel left his home at 08.40 A.M. in the morning so that he could reach to the Court by due time, however, it consumed total 2 hours 20 minutes to reach the court precinct and 5-7 more minutes to reach to the Court Room. Indeed, it is an admitted position that on the previous occasion, the cross examination could not be conducted on account of non -appearance



of the Counsel for accused persons, however, even on the said occasion, the default was due to Bonafide reasons. It is submitted that the matter was mentioned on 13.08.2025 and the Hon'ble Court was apprised about the factual situation. It is submitted that the accused should not suffer on account of Bonafide mistake of the Counsel.”

[Emphasis supplied.]

6. The aforesaid application has been dismissed by the impugned order dated 10.09.2025, *inter alia* noting inconsistency between the aforesaid averments made in the application under 311 CrPC and the submission advanced before the Court on 13.08.2025.

7. Mr. Kanhaiya Singhal, learned counsel for the petitioner, submits that, on 13.08.2025, he was unable to reach Tiz Hazari Court in time due to Independence Day rehearsal taking place at Red Fort. As noted above, it has been stated that the submission recorded in the said order was made by way of miscommunication and the counsel was, in fact, not available due the aforesaid factor.

8. Ms. Arya submits that, if at all, the petitioner is to be granted a further opportunity to cross-examine, such an opportunity should be granted with peremptory directions and heavy costs.

9. As noted above, the complainant/witness has not appeared to oppose the relief sought.

10. Having heard Mr. Singhal and Ms. Arya, I am of the view that Ms. Arya's suggestion is reasonable and ought to be accepted. The order sheets enumerated above, show that PW-1 also sought several adjournments before her examination-in-chief was conducted. The submission of Mr. Singhal that his non-appearance on 13.08.2025 was due to Independence Day rehearsal at Red Fort is also not implausible.



The fact remains that the petitioner is seeking a second opportunity to recall the witness, as the right to cross-examine PW-1 was closed for the second time *vide* order dated 13.08.2025, which causes some inconvenience to the witness. In my view, this can be compensated by substantial costs and time-bound directions.

11. In the interest of justice, therefore, the petition is disposed of with the following directions:

- a. I am informed that the proceedings are next listed before the Trial Court on 18.05.2026. On that date, the Trial Court is directed to recall the complainant [PW-1] for cross-examination by learned counsel for the petitioner, subject to payment of costs of Rs. 25,000/- by the petitioner to the complainant.
- b. The witness may be summoned on the date convenient to the Trial Court and the complainant.
- c. Mr. Singhal states that the cross-examination will be completed in a maximum of two hours and that he will complete it in one day, subject to convenience of the Trial Court.

12. It is made clear that, in the event there is default of compliance on part of the petitioner, no further opportunity to cross-examine will be provided.

13. The petition is disposed of with these directions.

PRATEEK JALAN, J

MAY 13, 2026
'pv'/AD/