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

Decided on: 04.05.2026

\+ CRL.M.C. 9293/2025

UJJAWAL BHARDWAJ & ANR. .....Petitioners

Through: Ms. Shinmila Ngasainao, Advocate.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Ms. Manjeet Arya, APP for State.
SI Sanjay K., PS Hauz Khas.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

CRL.M.A. 13766/2026 (*Exemption*)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.A. 13765/2026 (*early hearing*)

By way of this application, the petitioner seeks early hearing of the captioned petition. For the reasons stated therein, the application is allowed, and the petition is taken up for hearing.

The application stands disposed of.

CRL.M.C. 9293/2025

1. By way of the present petition, the petitioner assails an order passed by the learned Sessions Court in proceedings arising out of FIR No. 404/2022 dated 18.10.2022, registered at Police Station Hauz Khas under Sections 3(1)(r), 3(1)(s) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prayer clause

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in the present petition reads as under:

> "*1. Set aside the impugned order dated 31.08.2024, passed by the Ld. Sessions Court, whereby the Applicant's application under Section 348 BNSS (311 CrPC) for recalling PW- 1 Sh. Rajesh Lodhiwal, for further cross-examination, was dismissed and consequently direct the recall of PW-1 Sh. Rajesh Lodhiwal for further and complete cross-examination;*
> *2. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice.*"

2. Although the prayer clause refers to an impugned order dated 31.08.2024, whereby the petitioners' application under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"] (corresponding to Section 311 of the Code of Criminal Procedure, 1973 ["CrPC"]) is stated to have been dismissed, it is clarified by Ms. Shinmila Ngasainao, learned counsel for the petitioners, that the said application was, in fact, dismissed by a subsequent order dated 12.02.2025, which has been handed over in Court.

3. I have heard Ms. Ngasainao, and Ms. Manjeet Arya, learned Additional Public Prosecutor.

4. The FIR was registered at the instance of the complainant, who was examined as PW-1. The petitioners are the accused in the proceedings.

5. The chronology of events which led to the impugned order is as follows:

a. The complainant's examination-in-chief was recorded before the learned Sessions Court on 08.04.2024, and cross-examination was deferred at the request of learned counsel for the petitioners.

b. On the next date of hearing, i.e., 18.04.2024, although PW-1 was present, an adjournment was sought on the ground of non-

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availability of learned counsel for the petitioners herein.

c. Thereafter, on 08.05.2024, PW-1 was partly cross-examined; however, further cross-examination was deferred at the request of learned counsel for the petitioners, for production of certain documents.

d. On subsequent dates, being 10.05.2024 and 28.05.2024, adjournments were again sought on behalf of the petitioners despite the presence of PW-1 for cross-examination.

e. On the next two dates of hearing, i.e., 06.06.2024 and 01.07.2024, the cross-examination could not proceed for reasons not attributable to the petitioners.

f. When PW-1 was once again present on 31.08.2024 for further cross-examination, an adjournment was sought on behalf of the petitioners. The learned Sessions Court, however, declined the request, noting that several opportunities had already been granted to the accused persons for completing the cross-examination. Consequently, the right of the petitioners to further cross-examine PW-1 was closed.

6. The petitioners thereafter filed an application under Section 311 of CrPC [corresponding to Section 348 of BNSS], seeking recall of the witness for further cross-examination. The said application came to be rejected by order dated 12.02.2025, having regard to the repeated adjournments sought on behalf of the petitioners, with the following observations:

> "*5. In the above noted order, the repeated adjournments sought on behalf of the accused persons and the accommodation granted by the court have been manifested, which in my view, dis-entitle the*

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> *accused persons from invoking the power of the court by way of application under section 311 CrPC.* ***No doubt, the import and purpose of the application under section 311 CrPC is to recall the witness whose evidence may be essential for the just decision of the case, but it is also a settled legal proposition that this provision cannot be exercised as a tool in the hands of the accused persons so as to take the trial for granted by squandering the repeated opportunities granted for the cross-examination of witnesses*** *and thereafter seek to invoke the provision of section 311 CrPC for recalling the witnesses. The power under section 311 CrPC is not to be exercised in a routine manner to recall the witness as and when the counsel for accused persons moves an application expressing his unavailability on the earlier dates for some reasons. In the application in hand, though it is submitted that the cross-examination of PW1 Rajesh Lodhiwal could not take place as the main counsel was not available on the scheduled date for valid reasons, what were the valid reasons which prevented the counsel from appearing on the given dates have not been specified. It is already noted in the order dated 31.08.2024 that it is not on one date that the counsel for accused persons was not present for cross-examining of PW1, but on numerous occasions, this was the position. Thus, I do not find any tenable ground to allow the present application to recall PWI Rajesh Lodhiwal for his further cross-examination.*"[1]

7. The present petition came to be filed after a lapse of approximately 10 months thereafter, i.e., in December 2025, by which time, it is submitted, the trial had progressed substantially and all prosecution witnesses, except the Investigating Officer, had already been examined.

8. In the aforesaid circumstances, I do not consider it appropriate to exercise the inherent jurisdiction of this Court. It is evident from the chronology of events recorded hereinabove, which remains undisputed, that several opportunities were granted to the petitioners to complete the cross-examination of the complainant [PW-1]; however, adjournments were repeatedly sought on one ground or another.

[1] Emphasis supplied.

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9. Even after the order dated 31.08.2024, whereby the right to further cross-examine PW-1 was closed, the accused persons approached the learned Sessions Court under Section 311 of CrPC [corresponding to Section 348 of BNSS] only after a lapse of approximately five and a half months, and thereafter approached this Court after a further delay of nearly 10 months.

10. While the jurisdiction under Section 311 of CrPC [corresponding to Section 348 of BNSS] is undoubtedly available to secure the ends of justice, the Court is equally required to examine the conduct of the party in its entirety, and determine whether such conduct discloses a dilatory approach or an attempt to obstruct the orderly progress of the trial.

11. In this context, the judgment of the Supreme Court in *State (NCT of Delhi) v. Shiv Kumar Yadav*[2] underscores that the power to recall a witness is not to be exercised as a matter of course, but only where it is shown to be essential for a just decision, supported by tangible reasons. The relevant observations are as follows:

> "…….*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, we do not find any ground to justify the recall of*

[2] (2016) 2 SCC 402.

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witnesses already examined."[3]

12. The scope and ambit of Section 311 of CrPC [corresponding to Section 348 of BNSS] has been further elucidated by the Supreme Court in *Swapan Kumar Chatterjee v. CBI*[4], wherein the Court has clarified the nature of the power conferred under the said provision as follows:

> *"**11.** It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. **The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection.** The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. **The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.***
>
> ***12.** Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.*"[5]

13. In the present case, the petitioners failed to complete the cross-examination of the complainant on several occasions, and thereafter approached the learned Sessions Court, as well as this Court, seeking relief only after substantial and unexplained delay. In the meanwhile, other witnesses have now been examined, with the sole exception of the Investigating Officer. If at all the petitioners genuinely wished to complete the cross examination of PW-1, they ought to have taken their

[3] Emphasis supplied.
[4] (2019) 14 SCC 328.
[5] Emphasis supplied.

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remedies expeditiously, both after the orders dated 31.08.2024 and 12.02.2025. The conduct of the petitioners displays unexplained dilatory tactics, which have the effect of undue delay in the progress of trial.

14. In these circumstances, this Court is not inclined to exercise its inherent jurisdiction to direct recall of the complainant. The petition, alongwith the pending application, is therefore dismissed.

15. It is clarified that this Court has not expressed any opinion on the merits of the case, and the rights and contentions of the parties are left open to be considered by the appropriate Court, in accordance with law.

PRATEEK JALAN, J

MAY 4, 2026
'pv'/SD/

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