2026:AHC:227754

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 34898 of 2026

Nihal Anwar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Gaurav Tiwari, Mumtaz Ahmad Siddiqui, Riyaz Ahmad Siddiqui
Counsel for Opposite Party(s)	:	G.A.

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. The present application under Section 528 BNSS has been filed by the applicant with the prayer to quash the entire proceeding of Case No.10264 of 2017 arising out of Case Crime No.217 of 2017, under Sections 452, 323, 504, 506, 354 IPC, Police Station Mughalpura, District Moradabad as well as impugned order dated 20.11.2025 and 30.04.2026 passed by Civil Judge, Junior Division/FTC/J.M., Moradabad.

3. Learned counsel for the applicant submits that the prosecutrix was examined by the trial court at a time when her statement recorded under Section 164 Cr.P.C. was not available on record, as the same had allegedly been misplaced. It is further submitted that, after a considerable lapse of time, when the aforesaid statement was traced out, the trial court again summoned the prosecutrix under Section 311 Cr.P.C. for the purpose of proving her statement recorded under Section 164 Cr.P.C. Learned counsel contends that the aforesaid course adopted by the trial court is legally unsustainable and is likely to cause serious prejudice to the applicant. It is further submitted that the applicant had moved an application before the trial court seeking that since the statement under Section 164 Cr.P.C. had been traced out after a considerable period, the same be sent to the Forensic Science Laboratory for verification of its genuineness and authenticity. However, the said application was rejected by the trial court. It is also contended that despite the statement under Section 164 Cr.P.C. having been misplaced, no administrative order or official explanation was placed on record regarding the circumstances in which the statement went missing or the steps taken for tracing it out.

4. On the other hand, learned AGA as well as learned counsel for the opposite party no.2 oppose the prayer made by learned counsel for the applicant and have submitted that since the statement of the prosecutrix recorded under Section 164 Cr.P.C. has now been traced out, it is necessary, in the interest of justice, to afford an opportunity to prove the said statement in accordance with law. It is further submitted that summoning the prosecutrix for the said purpose would enable the trial court to bring the relevant material on record and arrive at a just and proper decision in the case. Accordingly, it is contended that the order passed by the trial court under Section 311 Cr.P.C. does not suffer from any illegality or infirmity warranting interference by this Court.

5. I have heard the submissions advanced by learned counsel for the parties and perused the record.

6. Upon perusal of the impugned order passed by the trial court, it appears that the prosecutrix has been summoned in exercise of powers conferred under Section 311 Cr.P.C. for the purpose of proving her statement recorded under Section 164 Cr.P.C. A bare perusal of the provisions of Section 311 Cr.P.C. reveals that the said provision empowers the court to summon, examine, recall or re-examine any person at any stage of an inquiry, trial or other proceeding, if his or her evidence appears to be essential for the just decision of the case. The underlying object of the said provision is to enable the court to arrive at a just and proper decision by ensuring that all relevant and necessary evidence is brought on record.

7. So far as the apprehension expressed by learned counsel for the applicant regarding the genuineness and authenticity of the statement of the prosecutrix recorded under Section 164 Cr.P.C. is concerned, the same appears to be based on mere surmises and conjectures. A perusal of the order passed by the trial court reveals that upon tracing out the statement recorded under Section 164 Cr.P.C., a specific reference to the factum of its recovery has been made in the order sheet. It is further evident that unless the statement in question is brought on record and duly proved in accordance with law, the trial court would not be in a position to properly appreciate the relevant material and arrive at a just and proper conclusion. Moreover, the applicant would have ample opportunity to cross-examine the victim/prosecutrix with regard to the said statement and to raise all permissible objections concerning its genuineness, authenticity and evidentiary value.

8. It is also pertinent to observe that Section 311 Cr.P.C. empowers the court to summon, examine, recall or re-examine any person who has already been examined, at any stage of the inquiry or trial, if such evidence appears to be essential for the just decision of the case. The object of the said provision is to

enable the court to discover the truth and ensure that no relevant material necessary for the just adjudication of the case remains excluded from consideration. In view of the aforesaid legal position, the mere fact that the statement recorded under Section 164 Cr.P.C. was traced out after a considerable lapse of time would not, by itself, render the exercise of jurisdiction under Section 311 Cr.P.C. impermissible, particularly when the applicant would have an opportunity to test the said statement in accordance with law.

9. This Court is of the considered view that the order dated 30.04.2026 passed by the trial court is just, proper and in accordance with law. No illegality or infirmity is discernible in the exercise of jurisdiction by the trial court under Section 311 Cr.P.C. Further, no prejudice appears to have been caused to the applicant by summoning the prosecutrix for the purpose of proving her statement recorded under Section 164 Cr.P.C., particularly when the applicant would have an adequate opportunity to cross-examine her and raise all permissible objections in accordance with law. Accordingly, no interference with the impugned order is warranted.

10. In view of the foregoing discussion, the instant application being devoid of merit, is hereby **dismissed**.

November 2, 2026
Ajeet

(Madan Pal Singh,J.)

Digitally signed by :-
AJEET KUMAR PATEL
High Court of Judicature at Allahabad