

**State Vs. Naresh & Ors.**

CNR No.: DLCT01-000637-2011

SC No. 28225/2016

FIR No. 72/2011

PS : Sadar Bazar

**08.08.2025**

Present: Mr. Amit Dabas, Ld. Addl. PP for the State.  
Mr. Manoj Sharma, Ld. Counsel for the accused,  
namely, Kishan @ Vicky and Ashish @ Pawan.  
Both the accused, namely, Ashish @ Pawan and  
Kishan @ Vicky are present.

### **ORDER**

1. The instant application has been filed on behalf of the State ('*applicant*' for short), under Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '*Cr.P.C.*')/ Section 348 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'BNSS'*), seeking calling of **Dr. Rajender Kumar, Assistant Director (Bio), FSL<sup>1</sup>** and **Mr. Amar Pal Singh, Assistant Director (Chemistry), FSL** as prosecution witnesses.

2. Ld. Addl. PP for the State outrightly submitted that *vide* order dated 24.07.2024, the Ld. Predecessor Judge had observed that the prosecution did not examine the witnesses from FSL to prove the serological and chemical report. It was further submitted by Ld. Addl. PP for the State that Dr. Rajender Kumar, Assistant Director (Bio), FSL and Mr. Amar Pal Singh, Assistant Director (Chemistry), FSL are the officials of FSL, Rohini, Delhi, who had prepared the said report. Ld. Addl. PP for the State further submitted that the aforesaid witnesses have not been examined in this case due to inadvertence and mere oversight and

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<sup>1</sup> Reference is made to the decision of the Hon'ble High Court of A.P. in ***Pattivada Balaji v. State of A.P., 2023 SCC OnLine AP 2544***, wherein the Hon'ble Court *inter alia* remarked, "16. The list of witnesses/documents filed with the Police report (Charge sheet) filed by the police is only a practice. It does not prevent the Prosecution or Magistrate/Court from examining any other witnesses or receiving documents if they help the Court to arrive at a just decision in the case." (Emphasis supplied)

that they are material witnesses to prove their respective reports. It was further submitted that the examination of the said witnesses is essential for the just decision of the case and in case present application is not allowed gross and irreparable loss would accrue to the State. It was further submitted by Ld. Addl. PP for the State that examination of the abovesaid witnesses is essential for proper adjudication of the present case as well as to highlight the correct facts before this Court and would be helpful to the Court in arriving at the just decision. Accordingly, Ld. Addl. PP for the State prayed that the present application be allowed in the interest of justice and opportunity should be granted to the State to examine the aforesaid witnesses as prosecution witnesses.

3. *Per contra*, Ld. Counsel for the accused persons has objected to the prayer of the prosecution on the ground that the present application has been filed by the prosecution at a highly belated stage as the case is at the stage of final arguments. Further, as per Ld. Counsel, by means of the present application, the State is endeavoring to fill in the lacunae in its case. Accordingly, it is prayed that no indulgence may be granted in favour of the State.

4. The arguments of Ld. Addl. PP for the State and that of Ld. Counsel for accused persons, heard as well as case record(s) have been thoroughly perused.

5. Before proceeding further, this Court deems it pertinent to reproduce the provision under Section 348 BNSS, as under;

**“348. 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.”**

*(Emphasis supplied)*

6. The underlying objective of the provisions under Section 311 Cr.P.C./Section 348 BNSS is to ensure that justice alone prevails and that there, “*may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side*”<sup>3</sup>. In fact, the Hon’ble Supreme Court in ***Hanuman Ram v. State of Rajasthan***, (2008) 15 SCC 652, while accentuating the underlying principles of the provisions under Section 311 Cr.P.C., *inter alia* observed as under:-

**7. “...29. The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by the court gives evidence against the complainant, he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. These aspects were highlighted in *Jamatraj Kewalji Govani v. State of Maharashtra* [AIR 1968 SC 178].” [Ed.: Quoting from *Zahira Habibullah Sheikh (5) v.***

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<sup>2</sup> *Pari materia* provision under Section 311 Cr.P.C. provides; “Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.” (Emphasis supplied)

<sup>3</sup> ***Zahira Habibullah Sheikh (5) v. State of Gujarat***, (2006) 3 SCC 374

*State of Gujarat, (2006) 3 SCC 374, pp. 391-93, paras 26-29.]..”*

*(Emphasis supplied)*

7. In fact, the superior Courts have persistently avowed that in the interest of justice, an application under Section 311 Cr.P.C. can be filed and entertained at any stage of the proceedings/ trial even after conclusion of the arguments. Quiet understandably, *“it is crystal clear that Section 311 Cr.P.C. provides wide discretionary power to the Court to reach a fair and just decision in the case. There is no limitation as to the stage at which the power can be exercised or the manner for exercising the same”*. It is equally trite law that age of case cannot be, in itself, be a decisive factor when a prayer for examination of material witnesses is made. Needless to further mention that it is further a settled law that a lacuna in prosecution case cannot be equated with the fallout of an oversight committed by a public prosecutor during the trial, the latter being clearly rectifiable. In this regard, reference is made to the decision of the Hon'ble Supreme Court in ***Rajendra Prasad v. Narcotic Cell, (1999) 6 SCC 110***, wherein it was observed as under;

*“7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not “fill the lacuna in the prosecution case”. A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage “to err is human” is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up.”*

*(Emphasis supplied)*

8. Consequently, being cognizant of the principles hereinunder noted, this Court deems it pertinent to consider the submission raised by Ld. Addl. PP for the State in support of his entreaty for recalling the aforementioned witness. In this regard, this Court outrightly observes that a perusal of the case record demonstrate that no witness has been examined from FSL in order to prove the serological and chemical reports. Accordingly, calling Dr. Rajender Kumar, Assistant Director (Bio), FSL and Mr. Amar Pal Singh, Assistant Director (Chemistry), FSL, as prosecution witnesses, in the opinion of this Court does not amount to filling in the lacuna rather to permitting the correction of an oversight/inadvertence and does not, in considered opinion of this Court appears to be a deliberate endeavor on the part of the prosecution to delay the trial. Correspondingly, as aforementioned, superior Courts have persistently avowed that lacunae in prosecution case is not equivalent to a fallout and oversight of public prosecutor during trial, either in producing relevant material or eliciting relevant answers from the witnesses. In fact, it is repeatedly declared that such latches or mistake during the conduct of case cannot be treated as lacunae, which cannot be filled up.

9. In light of the foregoing discussion, this Court is of the considered opinion that reasonable grounds for exercising its discretion under Section 311 Cr.P.C./Section 348 BNSS, for calling of Dr. Rajender Kumar, Assistant Director (Bio), FSL and Mr. Amar Pal Singh, Assistant Director (Chemistry), FSL, as prosecution witness as prosecution witness, as prayed for by the Ld. Addl. PP for the State are made out. Accordingly, the present application is hereby ***allowed*** and Dr. Rajender Kumar, Assistant Director (Bio), FSL and Mr. Amar Pal Singh, Assistant Director

(Chemistry), FSL are permitted to be called for their examination as as prosecution witnesses.

10. Present application is disposed of as ***allowed*** in above terms. **Dr. Rajender Kumar, Assistant Director (Bio), FSL** and **Mr. Amar Pal Singh, Assistant Director (Chemistry), FSL** be **summoned** for the next date of hearing *i.e.* **24.09.2025**.

Abhishek Goyal  
ASJ-03, Central District,  
Tis Hazari Courts, Delhi  
08.08.2025