

IN THE COURT OF SHRI HASAN ANZAR,  
SPECIAL JUDGE, PC ACT (CBI-03), ROUSE  
AVENUE DISTRICT COURT, ND

*CBI Vs. Binod Kumar Giri & Anr.*  
*CC No. 321/2019*  
*RC No. 1(A)/2016*  
*IA No. 05/2026*

10.02.2026

ORDER

1. An application under section 348 of BNSS (Formerly Section 311 Cr.P.C.) { *hereinafter to be referred as “application”* } is moved on behalf of the prosecution to recall previously examined witnesses and for examining fresh witnesses.
2. This is second application u/s 348 BNSS filed by Prosecution, an earlier application for examining additional witnesses namely Sh. Sudhir Kumar Dhawan whose name was not included in the list of witnesses due to inadvertence and the said application was allowed on 14.07.2025 and the present application also relies inadvertence as a ground for examining some witnesses.
3. Brief facts relevant for the purpose of the present application are that a case was registered by CBI on 17.02.2016 under Section 120-B IPC and Sections 7, 12, 13(1)(a), 13(2) r/w 13(1)(d) of PC Act, 1988 against (1) Sh. Binod Kumar Giri, Upper Division Clerk (UDC), CBI, Vigilance Cell, CBI HQ, New Delhi, (2) Sh. Asif Ibrahim Dadarkar, Director, M/s Sahara

Dredging Ltd. Mumbai and (3) Mrs. Humera Asif Dadarkar, Director, M/s Sahara Dredging Ltd. Mumbai on the basis of a source information.

4. It is alleged that A-1 was working as Upper Division Clerk (UDC) while working at CBI Vigilance Cell, and. vigilance clearance was marked to him and information was received that accused Binod Kumar Giri was indulging in undesirable and illegal activities of contacting the CMDs/MDs of the concerned Companies/Entities whose clearance was sought by the Ministry and other authorities and inform them about the pending Clearances and demand illegal gratifications for processing the matter and to give a positive Clearance Report. It is also alleged that A-1 Binod Kumar Giri had contacted A-2 over phone and demanded illegal gratification and pursuant to which an amount of Rs. 10,000/- was deposited in the bank account of relative of A-1. During the course of investigation, it was revealed that accused had obtained one Lenovo Tablet and the same was seized from service center of Lenovo. During the investigation specimen voice and handwriting of accused B.K. Giri was obtained.

5. It is contended by the Ld. Sr. PP for the CBI on the basis of application that while examining the IO of the present case it was found during scrutiny that certain documents were not proved by the respective witnesses and it is also contended that some of the witnesses were left out inadvertently in the charge sheet by not including their names in the list of the witnesses, although the documents qua these witnesses were filed with the charge sheet. It is contended that no prejudice shall be caused to the

accused persons as they would get sufficient opportunity to cross examine the witness(s). It is further contended that examination of the witness(s) is very much necessary and essential for the just decision of the case.

6. Ld. Sr. PP for the CBI has relied upon (i) *Gulzar Singh & Ors vs. State of Punjab & Anr* and (ii) *Dr. Pradeep Dutta vs. State (NCT of Delhi) & Ors*.

7. Separate replies of the application were filed on behalf of the accused persons.

8. It is contended on behalf of the accused persons that the prosecution is trying to fill up the lacunae at a very belated stage and is delaying the culmination of trial.

9. It is also contended on behalf of the accused persons that present case was registered on 17<sup>th</sup> February, 2016 and for a period of more than ten years, the prosecution was unable to identify the name of some witnesses were not included in the charge-sheet or that some witnesses are to be recalled. It is submitted that inordinate delay in examining any witness would be prejudicial to the accused and no reasons whatsoever were furnished in respect of the inordinate delay in moving the present application. It is also contended that powers under section 348 of BNSS are required to be exercised with utmost caution, circumspection and being discretionary power and cannot be used to prolong the proceedings.

10. It is also contended that mere change of a public prosecutor would not be a ground to permit the recall of the witnesses already examined.

11. Ld. Counsels for A-1 and A-2 have relied upon (i) **Swapan Kumar Chatterjee vs. CBI (2019) 14 Supreme Court Cases 328**, (ii) **Ratanlal vs. Prahlad Jat & Ors. (2017) 9 Supreme Court Cases 340**, (iii) **State (NCT of Delhi) vs. Shiv Kumar Yadav & Anr. (2016) 2 Supreme Court Cases 402** and (iv) **Mohsin Khan vs. State of Delhi ( 2025) SCC OnLine Del 5609**.

12. I have considered the submission advanced by both the sides.

13. Section 348 of BNSS (*Corresponding to Section 311 Cr.P.C.*) provides that the court at any stage of inquiry/trial of proceedings could summon any person as a witness or recall any person already examined. It further provides that the examination, summoning or recall or re-examination of any person may be directed if the court is of the opinion that such evidence is essential for the just decision of the case.

14. In ***State (NCT of Delhi) vs. Shiv Kumar Yadav, (2016) 2 SCC 402*** it was observed that “*object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The power available with the court to prevent injustice has to be exercised only if the court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situations when such power can be exercised. The legislature in its*

*wisdom has left the power undefined. Thus, the scope of the power has to be considered from case to case. The guidance for the purpose is available in several decisions relied upon by the parties.”*

15. In ***Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461***, it was a case in which the complainant was examined but he did not support the prosecution case. On account of subsequent development, he filed an application for his recall under Section 311 CrPC which was declined by the trial court but allowed by the High Court, the Hon'ble Supreme Court restored the order passed by Trial Court and held that ***such recall and re-examination of any person, appears in the view of the court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.***"

16. Section 311 Cr.PC. (Now 348 BNSS) as interpreted by the superior court provides that recall/re-examination of any person is permitted, if the same is in the interest of justice and essential for the just decision of the case and the evidence as proposed to be tendered is necessary to the issues before the court. The power under Section 311 Cr.PC to be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. It cannot be used to fill a lacuna or make out a new case.

17. For easy reference, name of witnesses proposed to be examined and grounds in the application are given in the form of tabular chart:

Sl. No.	Witness	Document	Reason/Ground
1.	Surender Kumar (already examined as PW-3)	D-35 (Letter dated 27.06.2016 enclosing CDRs & CAF of mobile nos. 9971713461, 8800367111, 997155197 and 9910028638) & D-46 (Cell ID Locations & CDRs of 2 mobile nos. 9650938949, 826674923)	Due to inadvertence, said documents could not be shown to Surender Kumar during his evidence. As these documents are necessary for the just decision of the case.
2.	Saibal De (already examined as PW-21)	D-31 Letter dated 18.04.2016 & 06.05.2016	Due to inadvertence D-31 was not shown to him (Saibal De) during his evidence. Documents clearly reveal about giving of Lenovo Tablet. Recall is necessary to prove the relevant documents i.e. D-31.
3.	Mukesh Prachand (already examined as PW-46)	Production Memo dated 18.02.2016	Due to inadvertence Production Memo dated 18.02.2016 was not shown to him (Mukesh Prachand) during his evidence vide which article no. 5 one I Phone model no. A-1429 was seized from accused Asif Ibrahim Dadarkar.
4.	Mahesh Kumar	D-15 CDR of Telephone No. 022-26590017	Due to inadvertence name of Mahesh

			Kumar could not be mentioned in the list of documents filed with charge-sheet. Recall is necessary to prove this document.
5.	Bikram Singh Negi	Voice Specimen memo dated 22.02.2016	Due to inadvertence the name of Bikram Singh could not be mentioned in the list of witnesses filed with the charge-sheet.
6.	Subhash Sharma	Specimen handwriting	Due to inadvertence the name of Subhash Sharma could not be mentioned in the list of witnesses filed with the charge-sheet.

18. A bare perusal of the application moved on behalf of the prosecution would reveal that the application is premised on the ground of inadvertence either by not putting the documents during their examination and secondly, not including the name of witnesses in the charge-sheet although document is available on record.

19. PW-21 Sh. Saibal De was examined and cross-examined on 20.07.2022. A reading of his statement would reveal that he had stated that an employee of his company gave a Lenovo Tab to accused BK Giri. The prosecution is basically trying to bring reply to Notice u/s 91 CrPC on record as well as the distribution list of Diwali Gifts. The said distribution

list even did not mention the name of Lenovo Tab or it is not even the case of prosecution that any dry fruits were given to accused V. Giri and it is perplexing as to how the list of distribution of dry fruits could be connected to the Lenovo Tablet. Reference to Statement of PW-21 Saibal De reflects that erstwhile PP had examined the PW-21 in a conscious manner and mere change of Public Prosecutor/Counsel would not mean that previously examined witness could be recalled in the absence of substantial or justifiable reason. A charge-sheet relies on number of documents and it is not necessary for Prosecution to refer and load the Court with each and every document by merely exhibiting it without conducting any due diligence and pressing for recall of witness after more than 4.5 years and therefore, the prayer for re-call of PW-21 Saibal De is declined.

20. PW-3 Sh. Surender Kumar was examined on behalf of Prosecution on 24.10.2019. The necessary CDR/CAF was not put to the witness for the reasons best known to the Prosecution. During the course of arguments, it was repeatedly enquired from the Ld. Sr. PP in what manner the recall of PW-3 is essential in relation to the charges framed against the accused persons. An application u/s 348 BNSS cannot be simply allowed because Prosecution wants to examine a particular witness again. The application must disclose clear reasons as to why PW-3 Sh. Surender Kumar is required to be re-called and not on the wishes of the party that it desires to examine a witness. The only justification furnished is that because of inadvertence, the document could not be shown to the witness and the only submission is made to the effect that B.K. Giri was speaking to some person and therefore, no substantial arguments were made and a bare

perusal of the reasons and justifications for re-call of PW-3 Surender Kumar from the application would reveal that even prosecution is unable to explain the exact reasons and justification for recall of PW-3 Surender Kumar without undertaking the exercise of diligence and pressing the recall of witness after about seven years and therefore, the prayer for re-call/examination of PW-3 Surender Kumar is declined.

21. PW-46 Mukesh Prachand was examined and cross examined on 31.07.2024. The necessary mobile phone of accused No. 2 Asif Ibrahim Dadarkar was not put to him in his evidence. A substantial delay has already been caused. However, considering the fact that it is one of the materials on the basis of which Prosecution is trying to link Mobile Phone i.e. “*I Phone model no. A-1429*” of accused Ibrahim Dadarkar which was seized by PW-46 Mukesh Prachand which is one of the case property proposed to be relied by the Prosecution. The prosecution is permitted to re-call/examine PW-46 Mukesh Prachand.

22. Prayer is also made to the effect that Sh. Mahesh Kumar, Manager MTNL be permitted to examine in reference to CDR of telephone No. 022-26590017. Before considering this prayer, it is pertinent to mention that Mahesh Kumar was not cited as witness in the present case. PW-51 Jyoti Deepak Balani was examined with reference to Telephone No. 022-26590017 and three documents (*vide Ex. PW51/A to Ex. Ex. PW51/D*) were brought on record. It would have been prudent on the part of prosecution to have put D-15 CDR of 022-26590017 since, it was the case of prosecution that calls were made by one of the accused on 022-

26590017 and it should have alerted the prosecution to examine necessary witness with reference to the CDR of 022-26590017. Considering the fact that this particular CDR is attempted to be brought on record by the Prosecution in which calls were made/received and therefore, in the interest of justice as well as for the just decision of the case, the prosecution be permitted to examine the necessary witness i.e. Sh. Mahesh Kumar with reference to D-15.

23. In so far as voice specimen and specimen handwriting of the accused is concerned, it appears that Prosecution has not examined any independent witnesses. As per prosecution specimen voice and specimen handwriting of the accused were obtained during the investigation in the presence of respective independent witnesses whose names were not included in the charge-sheet due to inadvertence. Both specimen voice as well as specimen handwriting were obtained to link it with questioned voice and handwriting of accused B.K. Giri and thereafter, voice examination report and handwriting report were furnished by the experts. Considering the nature of evidence although of formal character and its relative importance, the prosecution is permitted to examine both the witnesses namely Bikram Singh Negi and Subhash Sharma.

24. In view of the above mentioned discussion, the application to the extent of recall/examination of PW-21 and PW-23 is rejected whereas, application is partly allowed to the extent by permitting the prosecution to examine PW-46 Mukesh Prachand, Sh. Bikram Singh Negi, Sh. Subhash Sharma and Sh. Mahesh Kumar subject to the availability of the witnesses

and not more than one opportunity shall be provided to the prosecution. It is clarified that examination of the above mentioned witnesses would not be a ground to seek an adjournment or deferment of recording of statement of PW-55/IO Sudhanshu Shekhar.

25. With these observations, the application stands disposed of.

*(Announced in the open court  
today i.e. on 10.02.2026).*

**(HASAN ANZAR)**  
Special Judge (PC Act) CBI-03,  
RADC/New Delhi/10.02.2026