

**IN THE COURT OF SH. PREM KUMAR BARTHWAL
PRINCIPAL DISTRICT & SESSIONS JUDGE
NORTH DISTRICT: ROHINI COURTS: DELHI**

**CNR No. DLNT01-015995-2025
CR No. 320/2025**

Saurabh Gupta
S/o Shri Arvind Kumar Gupta
R/o D-1/16, Sector-16,
Rohini, Delhi

.....Revisionist

Versus

State
(Government of NCT of Delhi)

....Respondent

Date of institution : 03.12.2025
Date of arguments : 25.03.2026
Date of Order : 25.03.2026

ORDER

1. Vide the instant revision petition, the revisional jurisdiction of this court has been invoked u/s 438 BNSS, assailing the order of the Ld. Trial Court dated 09.04.2025, passed in Complaint case bearing Ct. Case No. 5296263/2016, titled 'State Vs. Saurabh Gupta' vide which the application for recalling the witnesses i.e. PW1 and PW2, was partly allowed, restricted to the cross-examination of PW1 only.

2. The brief facts, in a nutshell, which could be culled out

from the above revision petition, and the trial court record, which has been summoned, are that on 15.10.2015 at about 06.45-06.55 am at H-Block, Corner, near Jain Bharti Public School, Delhi accused/revisionist Saurab was found driving the motorcycle bearing registration No. DL8S-AR-5740 in rash and negligent manner, so as to endanger human life and personal safety of others and while driving the said motorcycle in said manner, he hit the complainant namely Ms. Akta Sharma and consequently, complainant sustained simple injuries.

3. On completion of investigation, charge-sheet for the offence u/s 279/338 IPC and 3/81 M.V. Act against the accused Saurab was filed. In the said case, Ld. Trial Court passed the impugned order dated 09.04.2025.

4. Aggrieved against the said impugned order, the revisionist has preferred the present revision petition praying therein to set aside the impugned order on the grounds that PW2/IO is also a material witness whose cross-examination is relevant for just and proper adjudication of the case and in the present case IO has committed faulty and incomplete investigation. Ld. Trial Court without giving any reason to disallow the cross-examination of IO passed a non-reasoned order. IO has neither recorded statement of any public witness nor placed CCTV footage of alleged incident. Therefore, the cross-examination of IO would help the court to ascertain the actual

facts to arrive at a just decision. It is submitted that when earlier counsel failed to take steps, the applicant/revisionist engaged a new counsel. A litigant should not suffer due to negligence of his counsel and substantive justice should not be defeated by procedural lapses. The revisionist has prayed to set aside the impugned order dated 09.04.2025.

5. I have heard the arguments extended by Ld. Counsel for the revisionist and Sh. Girish Giri, Ld. Counsel for the respondent and I have also gone through the material placed on record and the relevant case law. The Ld. Counsel for revisionist submits that the revisionist has right to defend his case and also to cross-examine PW2 on the point of faulty investigation and on non-joining of public witnesses as well as collection of CCTV footage and if opportunity for cross-examination is not given then the accused would suffer irreparable loss and injury. On the other hand, Ld. Addl. PP for the State contended that PW2 / IO was examined on 21.10.2019 and application for recall of said witness was filed after many years. It is further contended that the revisionist only wants to delay the matter and that the impugned order is an interlocutory order and present revision is not maintainable and deserves dismissal.

6. Ld. Counsel for the revisionist has relied upon the judgment in the case Rajaram Prasad Yadav Vs. State of Bihar and Another (2013) 4 Supreme 621 wherein it is observed:

“16. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.”

7. Ld. Counsel for the revisionist has further relied upon the judgment in the case of *Natasha Singh Vs. CBI (State) (2013) 82 A CrC 387* wherein it is observed as under:

“7. Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under the Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case.

8. The Hon’ble Supreme Court of India in the said case of *Natasha Singh (supra)* further observed as under :

“14. The scope and object of the provision is to enable the Court to determine the truth and to render a just

decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party.”

9. Perusal of record reflects that in the application under Section 311 CrPC, the applicant/revisionist sought recall of PW1 and PW2 for cross-examination. However, vide the impugned order, only PW1 was permitted to be cross-examined while the request regarding PW2 was declined. Ld. Counsel for the revisionist submitted that due to the Covid-19 outbreak, proceedings remained stalled for considerable period. Upon engaging new counsel, the revisionist discovered that cross-examination of PW2 had not been allowed. It is contended that PW2, being the Investigating Officer in the present case, conducted a faulty and incomplete investigation. PW2 was examined-in-chief but he was not cross-examined. Cross-examination of the Investigating Officer is a vital component of criminal trials as it enables scrutiny of the credibility of evidence and exposes procedural lapses. It directly affects the reliability of the prosecution’s

case by testing the accuracy of the timeline and collection of evidence. This court also cannot lose sight of the fact that the IO / PW2 is also an important and material witness of the case qua the investigations and for just adjudication of the case in question, the accused's right to cross-examine the IO will facilitate just decision of case. The revisionist has thus demonstrated sufficient grounds to seek the cross-examination of PW2 to ensure a just and complete determination of the case. The impugned order does not record any reason for disallowing the cross-examination of PW2 while permitting recall of PW1 only. Therefore, request for cross-examination of IO / PW2 was reasonable for a fair adjudication of the matter and rejection of said request was erroneous and improper. In the considered opinion of the court, no harm would be caused to the prosecution, if PW2 was also allowed to be cross-examined u/s 311 Cr.PC (348 BNSS) and impugned order dated 09.04.2025 to that extent of rejecting recall of PW-2 for cross-examination is found to be improper, incorrect and perverse and is hereby set aside. Ends of justice would be met by giving one opportunity to the accused / revisionist to cross-examine PW2 subject to deposit of Rs.2,000/- as cost with DLSA(North) District Rohini and availability of the said witness/PW-2.

10. In view of the above, the revision petition stands allowed and disposed off accordingly.

11. Nothing expressed herein, shall tantamount, to any

expression on the merits of the case.

12. TCR be sent back along with a copy of this order.

Revision petition file be consigned to Record Room.

Announced in the open court
today on 25th day of March 2026

(PREM KUMAR BARTHWAL)
Principal District & Sessions Judge
North District/Rohini Courts/Delhi (NSR).