

**IN THE COURT OF THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE AND FTSC-I, CHAMARAJANAGARA**

DATED: THIS THE 09th JANUARY 2026

PRESENT:

**Sri. S.J.KRISHNA
B.Sc., LL.B.
Addl. District & Sessions Judge,
FTSC-I, Chamarajanagara.**

**Spl.Case No.95 of 2023
CR No. 26 of 2023**

**COMPLAINANT : State by Terakanambi Police,
Chamarajanagara District.**

**(By Learned Spl. Public Prosecutor,
Chamarajanagara)**

VERSUS

**ACCUSED : Sri.SURENDRA @ SOORI @ SANJU
/APPLICANT S/o Sri.Mahadevappa
@ Mahalingappa Shetty,
Aged about 23 years,
Occu: Agriculture,
R/At: Bommanahalli Village,
Gundlupet Taluk,
Chamarajanagara District.**

**(By Sri.Prasanna Kumar B.,
Advocate, Chamarajanagara)**

**ORDER ON BAIL APPLICATION FILED UNDER
SECTION 311 Cr.PC.,**

The accused has filed this application under Section 311 of Code of Criminal Procedure praying the Court to recall PW1 to PW5 for the purpose of Cross examination.

2. The Ld Spl Public Prosecutor has filed objections to the application and prayed the Court to dismiss the same.

3. I have heard the arguments addressed by the Ld counsel for the accused and the Ld SPP for the State.

4. I have gone through the materials available on record. The following points arise for my determination.

Point No.1: Whether the accused has made out a case so as to allow the application filed under Section 311 of Cr.PC?

Point No.2: What Order?

5. My findings to above said points are as follows:-

Point No.1: In the NEGATIVE

Point No.2: As per final order, for the following;

REASONS

6. **Point No.1:** The accused has filed this application under section 311 Cr.PC praying the Court to recall PW1 to PW5. The accused has stated that the witnesses PW1 to PW5 are cross examined by the defense counsel and there are some important questions to testify the witnesses and it is just and necessary to cross examine them. The above witnesses are very important witnesses and were not cross examined for the reason that the counsel for the accused was unable to attend the Court on that day due to traffic. The accused has recently come to know of certain facts regarding the antecedents and character of the above witnesses and it is necessary to cross examine them. The recalling of the witnesses is essential to meet the ends of justice.

7. The Learned Spl. Public Prosecutor has filed objections to the application. The prosecution has stated that it has already examined PW1 to PW18. The PW1 to PW5 have been extensively cross examined by

the accused. Hence, the application is not maintainable. The application is filed with a view to delay the proceedings. The trial in a case filed under the provisions of POCSO Act has to be concluded within one year and there is no scope for recalling the victim girl repeatedly to the Court. Hence, the application deserves to be dismissed.

8. In order to adjudicate upon the application under consideration it is useful to refer to the decision of Hon'ble High Court of Delhi and the Hon'ble Supreme Court of India.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 05.01.2026

CRL.M.C. 4782/2024

SH. VIMAL GHAI

versus

SH. M. P. SHARMA

9. There is no gainsaying that fair trial is a part of Article 21 of the Constitution of India. The Hon'ble Supreme Court in the case of State (NCT of Delhi Vs. Shiv Kumar Yadav (2016) 2 SCC 402, held that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the

victim and the society. In the name of fair trial, the system cannot be held to ransom. The Hon'ble Court held that while advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It is normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a re-trial must follow on every change of counsel, can have serious consequences on conduct of trials and criminal justice system. If the witnesses are to be re-called again and again and are required to repeatedly appear in Court to face cross-examination, it can result in undue hardship, which is not permissible. 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.

*IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRL.) No. 10082 OF 2024
MADHAB CHANDRA PRADHAN & ORS.
Versus
STATE OF ODISHA*

10. We have heard learned counsel for the petitioners, who would submit that Section 33 (5) does not operate as an absolute bar for recalling the child as a witness for re-examination. Learned counsel for the petitioners would argue that Section 33 (5) would also not come in the way of the Special Court's powers under Section 311 of the Cr.P.C to recall or re-examine any person who has already been examined. It would be apposite to reproduce Section 311 of the Cr.P.C before adverting to the facts of the present case. Section 311 of the Cr.P.C reads as under:

"311. 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..."

We are of the considered opinion that although Section 33 (5) would not act as an absolute bar to recall the victim for re-examination as a witness, each case must be looked at in the context of its individual facts and circumstances. Thus, the question which falls for our consideration in the present case is whether in the exercise of its powers under Section 311 of the Cr.P.C, the Special Court ought to have recalled the child/victim for re-examination as witness, keeping in mind the mandate under Section 33 (5) of the Act.

6. The principles which would guide the exercise of a Court's power under Section 311 of the Cr.P.C were succinctly summed up by this Court in State (NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402. It was laid down by this Court that first, the plea for recall of a witness under Section 311 must be bona fide and genuine. Secondly, applications for recall of a witness under Section 311 should not be allowed as a matter of course and the discretion given to the Court must be exercised judiciously, not arbitrarily.

11. The facts of the present case are discussed in the backdrop of the ratio of above decisions. The grandfather of the minor victim girl has filed a complaint against the accused with Terakanambi PS, Chamarajanagara District. The Terakanambi PS has registered a case in Cr No.26/2023 against the accused for the offences punishable under sections 363, 376(2)(n) 376(3) IPC and under sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 and Section 9 of Prohibition of Child Marriage Act.

12. The IO has submitted charge sheet against the accused alleging the offences punishable under sections 363, 376(2)(n), 376(3) IPC and under sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 and Section 9 of Prohibition of Child Marriage Act.

13. After the submission of charge sheet upon hearing the accused and the prosecution the charges were framed read over and explained to the accused. The accused did not plead guilty claims to be tried. The prosecution has examined the victim girl/CW2 as PW1,

complainant/CW1 as PW2, the mother of the victim girl/CW3 as PW3, the grandmother of the victim girl/CW5 as PW4. The prosecution has examined seizure mahazar and spot mahazar witnesses, the school Head Master and the owner of seized motor bike as PW5 to PW11. PW9 and PW11 have not supported the case of prosecution and were cross examined by the prosecution. The spot mahazar witnesses are examined as PW12 and PW13. The prosecution has examined the medical officer who has examined the victim girl as PW14. The WPSI who has recorded the statement of victim girl is examined as PW15. The Woman Police Constable who has photographed and video recorded the proceedings is examined as PW16; the photographer who has printed the photographs is examined as PW17. The CW52 who has received the complaint from CW1 and registered the case and conducted preliminary investigation is examined as PW18. The case is posted for examination of IO. At this stage the accused has filed the present application.

14. The trajectory of recording of evidence of PW1 to PW5 is as under:

Sl. No.	Rank of witnesses	Date of examination in Chief	Date of Cross examination
01.	PW1/victim girl	10.10.2023 31.10.2023	15.11.2023
02.	PW2/Complainant	10.10.2023 04.01.2024	16.02.2024
03.	PW3/mother of the victim girl	10.10.2023 06.06.2024	06.06.2024
04.	PW4/grandmother of victim girl	12.07.2024	12.07.2024
05.	PW5/Ex.P20 Motor Bike seizure mahazar witness	02.08.2024	02.08.2024

15. It is not the case of the accused that he was not provided with an opportunity to cross examine PW1 to PW5. The accused is contending that he intends to put certain questions to the witnesses to testify their antecedents as he has discovered certain facts recently. If this contention is accepted it would open the Pandora's box as the accused would seek to recall the witnesses on the pretext that he has discovered new facts every now and then. When the case was posted

for evidence of Investigation Officer the accused has changed the counsel representing him. Now the accused has filed the present application. The PW1 to PW5 were subjected to extensive cross examination by the accused and the accused has availed the opportunity of cross examining the PW1 to PW5.

16. As observed above the accused has filed the present application after change of counsel. In view of the ratio of above decisions it is clear that change of counsel by an accused does not give raise to a ground to recall the witnesses who have been already examined. The mere assertion on the part of the accused that recall of PW1 to PW5 is essential to meet the ends justice does not satisfy the parameter enshrined under Section 311 Cr.PC., without there being any valid grounds. The justice should be dispensed with evenhandedly. In view of Section 33(5) of POCSO Act also the application is not maintainable at least against PW1. In these circumstances the accused is not entitled to recall PW1 to PW5.

17. The accused is also contending that his counsel could not cross examine PW1 to PW5 as the counsel

representing him held up in traffic. Hence, the application may be allowed.

18. The second ground urged by the accused is contrary to the materials available on record as the learned counsel for the accused has cross examined PW1 to PW5. The accused without verifying the records has urged this ground, hence the same is not acceptable. On a careful consideration of materials available on record it shows that the accused has not made out any grounds to allow the application. Accordingly, **Point No.1** is answered **in the NEGATIVE.**

19. **Point No.2:** In view of findings on Point No.1, I pass the following ;-

ORDER

The application filed under Section 311
of Cr.P.C. by accused is hereby dismissed.

(Dictated to the Stenographer directly on computer there afterwards corrected and printed, signed and pronounced by me on 09th day of January, 2026)

(S.J.KRISHNA)

Addl. District and Sessions Judge,
FTSC-I, Chamarajanagara.

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