

Order Below Exh.38
(State VS. Rabbani & Ors.)

The present application is filed by the prosecution under Section 311 of Criminal Procedure Code.

2. It contended that the chief examination of PW1 and PW2 recorded on 19/06/2026 by rejecting the adjournment application of prosecution. In result no cross order came to be passed against them. Therefore, in the insterest of justice no cross order came to be passed against PW1 and PW2 be set aside. Hence, he prayed for the recalling of aforesaid witnesses.

3. The prosecution has filed his say on the back leaf of application. It contended that sufficient opportunity is given to the accused. Hence, prayed for the rejection of the application.

4. Perused the application, say and record. Heard the Ld. APP and advocate of accused.

5. On the perusal of record it can be seen that accused no.1 to 3 have been chargesheeted for offence punishable under Section 326, 325, 323, 504, 506 r/w 34 of the I. P. C. The prosecution has examined PW1 and PW2 on 19/06/2026 and on the same day no cross order came to be passed against the accused. Section 311 of Cr.PC empowers the magistrate to recall and re-examine any person already examined, if the evidence of such witness appears to be essential to the just decision of the

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case. Considering the nature of case, the accused has every right to defend himself with assistance of tools made available by law. To decide the case on merits and for assuring fair trial, it is necessary to extend on opportunity of cross-examination of PW1 and PW2 to accused. Further, it appears that evidence of prosecution witness No.1 and 2 is essential for just decision of case. Hence, I pass following order:

ORDER

1. Application is allowed.
2. Issue witness summons to PW1 and PW2 on the payment of witness allowance of Rs.500/- each by accused.

Ausa
Date – 21.07.2026

(Smt. S. H. Nalawade)
Judicial Magistrate F.C., Ausa
(Court No.3)