



2026:CGHC:4277

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 179 of 2026

1 - Nikhilesh Tembhurne S/o Late Gangadhar Tembhurne Aged About 41 Years R/o Village- Rajnandgaon (Station Para Ward No. 11), Present Address- Ward No. 2, Ramanujganj, District- Balrampur-Ramanujganj (C.G.)

2 - Shahrukh Khan @ F.R.K. S/o Mo. Islam Khan Aged About 28 Years R/o Ward No. 2, Ramanujganj, District- Balrampur-Ramanujganj (C.G.)

... **Petitioner(s)**

versus

State Of Chhattisgarh Through Station House Officer, Police Station- Ramanujganj, District- Balrampur-Ramanujganj (C.G.)

... **Respondent(s)**

(Cause title is taken from the CIS)

For Petitioners	: Shri Rajeev Kumar Dubey, Advocate
For Respondent/State	: Shri Anish Tiwari, Dy GA

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

23.01.2026

1. The present petition is filed by the petitioners under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) against the impugned order dated 25.11.2025 passed by the learned Additional Sessions Judge, FTSC (POCSO Act), Ramanujganj, District-Balrampur-Ramanujganj, CG, in Special Sessions Case (POCSO)- 09 of 2022, whereby, the application filed by the petitioners under Section 311 of the CrPC (Section 248 of the BNSS 2023) has been rejected.

2. Brief facts of the case are that petitioners are accused persons in the Special Session Case (POCSO) No.9 of 2022, and facing trial for the offence under Section 7/8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. Petitioner-1 Nikhilesh Tembhurne is facing trial for the offence punishable under Sections 354(A), 356(D)(2), 506(B) of the IPC, and petitioner-2 Shahrukh Khan @ FRK is facing trial for the offence of Section 16/17 of POCSO Act, and 509 of the IPC. They are facing trial since 04.03.2022. Victim has been examined as PW1, and her examination and cross-examination was completed on 05.07.2022. On 24.03.2023, application filed by the accused persons under Section 311 as decided on 19.07.2023, and the victim – PW1 was re cross-examined on 02.09.2023. Thereafter, petitioners have again filed another application on 13.11.2025 under Section 311 of the CrPC for recalling of the victim for her re-cross-examination, which has been rejected vide order dated 25.11.2025, and the said order is under challenge in the present CrMP.

3. Learned counsel appearing for the petitioners would submit that accused persons have not received copy of statement of the victim recorded under Section 164 CrPC (here after referred to '164 statement of the victim'), therefore, she could not be cross-examined on that point. When learned counsel for the petitioners went through record of the trial Court, he came to know that 164 statement of the victim is annexed with the charge-sheet, in which there are material contradictions. Hence, she may be recalled for her re-cross-examination. He would further submit

that petitioners have filed another application for supplying copy of 164 statement of the victim and since complete documents have not been supplied to the petitioners, he could not raise proper defense during cross-examination of the witnesses. Learned trial court has erroneously rejected the application without considering the true aspect of the case. He would also submit that in the aforesaid circumstances, and for any lapse on the part of the investigating agency by non-supplying copy of the 164 statement of the victim, the accused persons cannot be punished. Therefore, the petition may be allowed and the learned trial court may be directed to recall the victim PW1 for her re-cross-examination.

4. On the other hand learned counsel appearing for the state opposes the submissions made by the learned counsel for the petitioners and submitted that the victim has been examined and cross-examined on 05.07.2022. After her examination and cross-examination, accused persons have filed the application under section 311 of the CRPC, which was allowed and she was re-cross examined on 02.09.2023. At the time of filing of charge-sheet, entire documents have been supplied to the accused persons and earlier, they have not raised any objection with respect to non-supply of any document. Thus, the accused persons were having knowledge of entire facts and circumstances of the case as well as the evidence annexed with the charge-sheet. It is only a ground created by the accused persons for re-cross-examination of the victim. On 02.09.2023, she has been re-cross examined and at that time also

such ground has not been raised by the accused persons. The victim cannot be called repeatedly for re-cross-examination to fulfill the lacunae. Therefore, the learned trial court has rightly considered the application and dismissed the same in which there is no infirmity or illegality and the present petition filed by the accused persons is liable to be dismissed.

5. Heard learned counsel for the parties and perused the material annexed with the petition.

6. In the present petition, except copy of order-sheet dated 20.11.2025 and 25.11.2025, no other document has been annexed by the petitioners to substantiate the submissions of learned counsel for the petitioners. From perusal of the order-sheets of learned trial court it transpires that trial of the case is pending since 04.03.2022 and the victim has been examined as PW1 on 05.07.2022. Thereafter, the application filed by the accused persons / petitioners under Section 311 CRPC was decided on 19.07.2023 and the victim was re-cross examined on 02.09.2023. It has also been observed by the learned trial court that while making the application under section 311 of CRPC on 25.04.2023, the petitioners have not raised any ground which has been raised in the present petition and not tried to get 164 statement of the victim confronted. The present application has been filed by the petitioners/accused persons after lapse of about 2 years which cannot be permitted to fulfill the lacunae. It has also been observed that the trial is at its fag end and the petitioners are trying to make delay in concluding the trial.

7. In case of **Ratan Lal Vs. Prahlad Jat** (2017) 9 SCC 340, Hon'ble Supreme Court has held that:

“16. That brings us to the next question as to whether the High Court was justified in setting aside the order of the Sessions Judge and allowing the application filed by PWs 4 and 5 for their re-examination. For ready reference Section 311 of the Cr.P.C. is 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”.

17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any

person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. In *Vijay Kumar v. State of Uttar Pradesh and Anr.*, (2011) 8 SCC 136, this Court while explaining scope and ambit of Section 311 has held as under:-

“17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said Section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of CrPC and the principles of

criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously”.

19. In *Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Others*, (2006) 3 SCC 374, this Court has considered the concept underlining under Section 311 as under:-

“27. The object underlying Section 311 of the Code is 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. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue

summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind”.

20. In State (NCT of Delhi) v. Shiv Kumar Yadav & Anr., (2016) 2 SCC 402, it was held thus:-

“..... Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. 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. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide

error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined”.

21. The delay in filing the application is one of the important factors which has to be explained in the application. In *Umar Mohammad & Ors. v. State of Rajasthan*, (2007) 14 SCC 711, this Court has held as under:-

“38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by

the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where *stricto sensu* the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed”.

22. Coming to the facts of the present case, PWs 4 and 5 were examined between 29.11.2010 and 11.3.2011. They were cross-examined at length during the said period. During the police investigation and in their evidence, they have supported the prosecution story. The Sessions Judge has recorded a finding that they were not under any pressure while recording their evidence. After a passage of 14 months, they have filed the application for their re-examination on the ground that the statements made by them earlier were under pressure. They have not assigned any reasons for the delay

in making application. It is obvious that they had been won over. We do not find any reasons to allow such an application. The Sessions Judge, therefore, was justified in rejecting the application. In our view, High Court was not right in setting aside the said order.”

8. From perusal of the impugned order it is clear that victim was examined and cross-examined fully, long back on 05.07.2022. Thereafter, she was re-cross-examined on 02.09.2023. After passage of time, petitioners have filed applications for re-cross-examination of the victim on the ground that she could not be confronted with her 164 statement. The reason assigned for the same is that the petitioners have not been supplied copy of her 164 CRPC statement. Petitioners have not filed any document to convince this court that at the time of filing of charge-sheet the entire documents annexed with it have not been supplied to them. Even during the long session of trial from 2022 to 2025, they have not claimed for supply of copy of the said statement, or even when the said statement was available with original set of charge-sheet, and record of the trial court, they have not claimed for its confrontation with evidence of victim PW1 at the time when her evidence was being recorded. The entire scenario shows that she has been warned over by the defense.

9. It is settled law that benefit of Section 311 CRPC cannot be extended to the accused to fill up the lacunae. When the victim has been examined, cross-examined, and further re-cross-examined, she cannot be called again and again for her re-cross-examination.

10. The provisions of section 311 CRPC can be invoked only in order to meet the ends of justice for strong and valid reasons, with great caution, and circumspection, and not to permit the accused persons to call the victim again and again for her re-cross-examination.

11. In view of above, this court does not find any error in the impugned order and is not inclined to interfere with the order passed by the learned trial court.

12. Accordingly, petition being *sans merit*, it is hereby dismissed.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE