



2026:CGHC:4283

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 259 of 2026

Shahil @ Ashu Sahu S/o Nanuk Sahu Aged About 19 Years R/o Ward No. 18, Shikshak Colony, Tilda-Nevra, District Raipur (C.G.)

... Petitioner

versus

State Of Chhattisgarh Through Station House Officer, Police Station Tilda-Nevra, District Raipur (C.G.)

---- Respondent

(Cause title taken from Case Information System)

For Petitioner	:	Ms. Divya Sahu, Advocate
For Respondent/State	:	Mr. Sumit Singh, Deputy A.G.

Hon'ble Shri Justice Ravindra Kumar Agrawal, Judge

Order on Board

23/01/2026

1. The present is a criminal miscellaneous petition under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 against the impugned order dated 17.11.2025, passed by learned Fourth Fast Track Special Court (POCSO), Raipur, in Special Criminal Case No. 121 of 2024, whereby an application filed by the petitioner under section 311 of CRPC has been rejected.



2. The brief facts of the case as emerges from the averments of the petition are that, the petitioner is an accused in the Special Criminal Case No. 121 of 2024 for the offence under sections 366, 376 and 376(3) of the IPC and sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'). The charge sheet was filed on 07.08.2024 and he was facing trial of the aforesaid offence. During the trial, the petitioner/accused made an application under section 311 of CRPC/348 of BNSS, 2023 for recalling of 03 prosecution witnesses (PW-1, PW-3 and PW-4) for their recross-examination on the ground that these witnesses have not properly cross-examined by his earlier counsel. The said application has been rejected by the learned trial Court on 17.11.2025, which is under challenge in the present petition.
3. Learned counsel appearing for the petitioner would submit that, section 311 of CRPC empowers the court to recall the witnesses at any stage for their further cross-examination for just decision of the case. Depriving the accused by not providing him sufficient opportunity to cross-examine the witnesses would hamper his defence, which would not be the object of fair trial. She would also submit that, by the mistake of the counsel, the accused cannot be punished. The witnesses are sought to be recalled for proper cross-examination and it is not to fill-up the lacuna and in the interest of justice and fair trial. The learned trial Court has erroneously considered the facts and circumstances of the case and has dismissed the application, which is liable to be set aside and the learned trial Court may be directed to



recall the witnesses (PW-1, PW-3 and PW-4) for their recross-examination.

4. On the other hand, learned counsel appearing for the State opposes the submissions made by learned counsel for the petitioner and has submitted that, the petitioner has not produced sufficient document in the present petition to demonstrate that there is requirement of recross-examination of the witnesses. He would also submit that except the order sheets of the learned trial Court, no other document has been filed by the petitioner. The victim has been examined on 08.11.2024 as PW-1 and her parents have been examined on 08.05.2025 as PW-3 and PW-4 and after a long time, the application under section 311 of CRPC was filed on 14.11.2025, which appears to be for filling-up the lacuna. The learned trial Court has rightly considered the entire aspects of the case and has rejected the application, which does not suffer from any illegality and the petition is liable to be dismissed.
5. I have heard learned counsel for the parties and perused the material annexed with the petition.
6. In the present petition, except the order sheets of the trial Court, no other document has been filed by the petitioner to demonstrate that what was the cross-examination by the witnesses on earlier occasion, what is the application made by the petitioner/accused and what are the questions left out by the defence to put before the witnesses. It transpires from the order sheet dated 08.11.2024 that the victim has been examined as PW-1, the parents of the victim have been



examined as PW-3 and PW-4 on 08.05.2025. On 17.09.2025, the accused was permitted to change his counsel and he is represented his new counsel. Thereafter, various dates were fixed for recording evidence of the witnesses and ultimately on 14.11.2025, the application under section 311 of CRPC has been filed.

7. In the matter of “**Ratan Lal v. Prahlad Jat**” (2017) 9 SCC 340, the 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 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. In view of the aforesaid facts and circumstances of the case and the settled principles of law laid down by the Hon’ble Supreme Court in the decisions referred to hereinabove, this Court is of the considered view that the petitioner has failed to establish that recall of PW-1, PW-3 and PW-4 is essential for the just decision of the case. The record reveals that the prosecutrix and her parents were examined and cross-examined at length and their evidence stood concluded much prior to



filing of the application under Section 311 of the Cr.P.C. Except the order sheets of the trial Court, no material has been placed on record to demonstrate what material questions were left out or how any prejudice has been caused to the petitioner. The application has been filed after an unexplained delay, even after change of counsel, and the plea that the earlier counsel did not conduct proper cross-examination, without any substantiation, cannot be accepted. The law is well settled that the power under Section 311 of the Cr.P.C. is not to be exercised as a matter of course or to enable a party to fill up lacunae in its case, and recall of witnesses can be permitted only for strong and valid reasons and with great caution and circumspection. The learned trial Court has duly considered all relevant aspects and has exercised its discretion judiciously while rejecting the application. This Court does not find any illegality, perversity or infirmity in the impugned order warranting interference under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. In view of the above, this Court does not find any error in the impugned order and is not inclined to interfere with it. Accordingly, the petition, being sans merits, is hereby **dismissed**.

Sd/-
(**Ravindra Kumar Agrawal**)
Judge