

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 315 of 2026**

1 - Ghanshyam Narang S/o Late Lakhan Lal Narang Aged About 43 Years R/o Village - Bhathagaon, Police Station - Amleshwar, District - Durg Chhattisgarh

2 - Parmanand Narang S/o Ghanshyam Narang Aged About 20 Years R/o Village - Bhathagaon, Police Station - Amleshwar, District - Durg Chhattisgarh

3 - Bugleshwari Narang D/o Ghanshyam Narang Aged About 24 Years R/o Village - Bhathagaon, Police Station - Amleshwar, District - Durg Chhattisgarh

4 - Devla Bai Narang W/o Ghanshyam Narang Aged About 37 Years R/o Village - Bhathagaon, Police Station - Amleshwar, District - Durg Chhattisgarh

... Petitioners**versus**

1 - State Of Chhattisgarh Through Station House Officer, Police Station - Amleshwar, District - Durg Chhattisgarh

... Respondent

For Petitioners : Mr. Rajeev Kumar Dubey, Adv. and
Ms. Divya Sahu, Advocate.

For Respondent/State : Mr. Vinod Kumar Tekam, G.A.

Hon'ble Shri Justice Sanjay Kumar Jaiswal**Order on Board**



27/02/2026

- 1 Heard.
- 2 The present petition has been filed by the petitioner under Section 528 of BNSS, 2023 being aggrieved by the impugned order dated 19.12.2025 passed in Criminal Case No. 1048/2022 by the learned Judicial Magistrate First Class, Bhilai-3, District - Durg (C.G.) whereby the learned judge has closed the opportunity for the accused persons to re-cross-examine the prosecution witnesses namely, Aatiq Hussain, Saroj and Mohshin Ahmed.
- 3 The case of the petitioners was that on the basis of the written complaint of complainant, the police of police station Amleshwar registered the FIR bearing Crime No. 154/2022 for the offence punishable under Sections 294, 427, 447, 34 of IPC against the petitioners and the case is pending before the learned JMFC, Bhilai-3, District – Durg (C.G.) in Criminal Case No. 1048/2022. During the trial, the petitioners filed an application under Section 311 of Cr.P.C. before the trial Court stating therein that cross-examination of prosecution witnesses No. 1 to 6 was conducted by the erstwhile advocate; however, some significant questions were not asked during said cross-examination, nor were denials properly recorded, which resulted in a failure to establish the defence of the accused. It was alleged that the previous advocate was in collusion with the complainant. Therefore, a request was made to recall the prosecution witness for further cross-examination. On perusal of the record, the learned trial Court allowed the application vide order dated 02.09.2025, directing that the accused had a full opportunity to cross-examine PW-1. However, in the interest of justice, one



more opportunity was granted. It was clarified that only one opportunity will be provided; subject to this direction, a summons was issued to witness for evidence.

- 4 Further, the case of the petitioners was that on 19.12.2025, prosecution witnesses, namely Aatiq Hussain, Saroj and Mohshin Ahmed were present in the Court and an advocate appeared on behalf of the accused persons and moved an application under Section 317 of Cr.P.C. for exemption from personal appearance, stating that the accused persons were absent due to some urgent work. The application was allowed in the interest of justice. Further, the defence counsel moved an application stating that the lead counsel is unwell, and requested an adjournment for cross-examination. The learned trial Court reviewed the records and observed that the evidence of all prosecution witnesses had already been recorded and cross-examined previously. The witnesses were recalled under Section 311 of Cr.P.C. only upon the request of defence counsel. Despite this, the defence counsel is absent today, and an adjournment is sought. Looking to the circumstances of the case, the Court did not find it appropriate to grant further opportunity for cross-examination. The opportunity for the accused to cross-examine the witnesses was closed. Hence, the petition.
- 5 Learned counsel for the petitioners submits that the learned trial Court erred in law by not exercising discretion judiciously under Section 311 of Cr.P.C., which mandates recalling witnesses in the interest of justice to prevent miscarriage of justice. The earlier order dated 02.09.2025 itself recognised the need for further cross-examination to address deficiencies, yet the impugned order summarily negates this without affording a single effective



opportunity. The closure of prosecution evidence forthwith is prejudicial and amounts to a denial of the petitioners' right to defend themselves effectively, as the witnesses' testimony forms a crucial part of the prosecution case regarding the alleged incidents of obstruction, demolition, and theft. The petitioners have not been dilatory in the proceedings; the request for recall was bona fide to rectify lapses by the erstwhile advocate, and the adjournment on 19.12.2025 was sought for a legitimate cause. The action of the learned trial Court in closing the evidence without prior notice or hearing on the adjournment application violates audi alteram partem, rendering the order null and void ab initio. As such, the order impugned is liable to be set aside.

- 6 Learned State counsel opposes the arguments advanced by the learned counsel for the petitioners and submits that the petitioners have granted sufficient opportunity for cross-examination of the prosecution witnesses. After allowing the application under Section 311 of Cr.P.C., the counsel for the petitioners was not present to cross-examine the prosecution witnesses. Therefore, the opportunity has been closed.
- 7 I have heard learned counsel for the parties and perused the material available on record including the impugned order.
- 8 Looking to the facts and circumstances of the case, and also looking to the fact that the trial Court has allowed the application under Section 311 of Cr.P.C to cross-examine the prosecution witnesses namely, Aatiq Hussain, Saroj and Mohshin Ahmed, but on 19.12.2025 when the above named prosecution witnesses were present in the Court, the defence counsel was not present for cross-examine due



to ill health and the opportunity of cross-examination for the prosecution witness has been closed. However, in the interest of justice, considering the fact that at present the I.O. is also calling for examination, it is appropriate to give one more opportunity to the accused persons to cross-examine the aforesaid prosecution witnesses.

- 9 Accordingly, the impugned order dated 19.12.2025 is set aside. The counsel for the accused persons is granted one more opportunity to cross-examine the prosecution witnesses, namely Aatiq Hussain, Saroj, and Mohshin Ahmed, with the condition that they will be cross-examined by the defence on the date they appear in Court. No further opportunity will be given, and the accused persons will pay an amount of rupees two thousand as an expense to every one of the aforesaid witnesses whenever they appear for cross-examination.
- 10 Accordingly, with the aforesaid direction, the CRMP is **disposed of** at the stage of admission.

Sd/-
(Sanjay Kumar Jaiswal)
Judge

H.L. Sahu