



2026:CGHC:16667

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 865 of 2026**

1 - Aman Ramteke S/o Jyoti Kumar, Aged About 21 Years, R/o Amapara Tahsil And District- Balod C.G.

... Petitioner**versus**

1 - State Of Chhattisgarh Through S.H.O. Balod District- Balod C.G.

... Respondent

For Petitioner	: Mr. Hemant Gupta, Advocate.
For Respondent	: Mr. Khulesh Sahu, P.L.

Hon'ble Shri Justice Sanjay Kumar Jaiswal**Order on Board****10/04/2026**

1. The instant petition has been filed under Section 528 of BNSS, 2023 against the order dated 22.12.2025 passed by the learned Second Additional Sessions Judge, Balod, District-Balod (C.G.) in Sessions Case No. 49/2024, whereby the application under Section 348 of BNSS filed by the petitioner for re-examination of prosecution witness Ashutosh Kaushik has been rejected.
2. Briefly, the facts of the case are that a charge-sheet for the offences punishable under Sections 109, 3(5), 103 of BNS has been filed by the concerned police station against the petitioner, and the same is pending trial. In this case, the prosecution witness namely Ashutosh Kaushik (PW-5) was examined on 05.07.2025, before the trial Court, and the defence counsel was

afforded sufficient opportunities to cross-examine him. The petitioner filed an application under Section 348 of BNS for re-cross-examination of the prosecution witness namely Ashutosh Kaushik (PW-5), which was rejected by the trial Court.

3. Learned counsel for the petitioner submits that the statement of prosecution witness Ashutosh Kaushik has been recorded before the trial Court, but his cross-examination on various aspects of the case remains to be done, which is necessary for the just decision of the case. He further submits that the injured person himself was carrying a knife and also had a knife on the date of incident, regarding which his cross-examination could not be conducted, therefore, the application filed by the petitioner is genuine and the trial Court committed grave illegality in rejecting the application. Hence, the impugned order dated 22.12.2025 is liable to be quashed, and the trial Court may be directed to give an opportunity for re-cross-examination of the said prosecution witness.
4. Per contra, learned State Counsel opposes the contention of the petitioner and submits that strong and valid reasons ought to have been assigned by the petitioner for recalling the witnesses and in absence thereof, the power under Section Section 311 CrPC (corresponding to 348 of BNSS) should not have been invoked to entertain the application, therefore, the trial Court has rightly passed the order rejecting the application u/s 348 of BNSS, which needs no interference.
5. I have heard learned Counsel appearing for the parties and perused the documents annexed with the petition including the

order impugned.

6. Section 348 of BNSS, 2023 states as under :-

348. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

7. The Hon'ble Supreme Court in the matter of State (NCT of Delhi) vs. Shiv Kumar Yadav and Another, reported in (2016) 2 SCC 402 has held that it is not justified to repeatedly summon the witness/victim merely on the basis of change of advocate or alleged deficiency in cross-examination. Paragraph 15 of which is as follows:-

“15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. 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 has 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 retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases

such as the present one. It can result in undue hardship for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination.”

8. Looking to the material available on record and on perusal of the impugned order, it is clear that the Ashutosh Kaushik (PW-5) has been cited as a seizure witness and Since the petitioner/defence was given a reasonable opportunity to cross-examine him, and he was discharged from evidence only after being cross-examined at length. Thus, it is clear that after giving sufficient opportunity for cross-examination to the defence counsel. The trial Court considered the fact that the opportunity for cross-examination again at this stage is not justified and rejected the application.
9. Thus, in view of the aforesaid decisions of the Hon'ble Supreme Court in the subject matter and also considering the facts and circumstances of the case, and the material available on record, I do not see any illegality or perversity in the order impugned to interfere with the order.
10. Accordingly, the instant petition is hereby **dismissed** at motion stage itself.

Sd/-

(Sanjay Kumar Jaiswal)
Judge

Sourabh P.