



2026:CGHC:14901



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AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 901 of 2026**

1 - Sajit Tirkey @ Chhote S/o Kamleshwar Tirkey, Aged About 21 Years, R/o Bharatpur, Markat Para Police Station - Sitapur Distt Sarguja Chhattisgarh.

... Petitioner**versus**

1 - State Of Chhattisgarh Through The Police Station - Sitapur, District Sarguja Chhattisgarh.

... Respondent

For Petitioner	: Mr. Bhupendra Singh, Advocate.
For Respondent	: Mr. Sumit Singh, Dy.A.G.

Hon'ble Shri Justice Sanjay Kumar Jaiswal**Order on Board****01/04/2026**

1. The instant petition has been filed under Section 528 of BNSS, 2023 against the order dated 04.02.2026 passed by the learned Additional Sessions Judge (FTC), Ambikapur, District-Sarguja (C.G.) in Sessions Trial No. 141/2023, whereby the application under Section 311 of CrPC filed by the petitioner for re-examination of the victim and her father and mother has been rejected.
2. Briefly, the facts of the case are that a charge-sheet for the offences punishable under Sections 376, 354, 509, and 376(2)(f) of IPC has been filed by the concerned police station against the petitioner, and the same is pending trial. In this case, the victim



(PW-2) was examined on 12.11.2024, and the father and mother of the victim were examined on 08.01.2025, before the trial Court, and the defence counsel was afforded sufficient opportunities to cross-examine them. The petitioner filed an application on 27.01.2026 under Section 311 of CrPC for re-cross-examination of the victim and her parents, which was rejected by the trial Court.

3. Learned counsel appearing for the Petitioner submits that the earlier appointed counsel, Mr. R.K. Choudhary, did not adequately cross-examine the victim (PW-2) and her father (PW-3) and mother (PW-4). Consequently, the petitioner decided to engage a new counsel Mr. Janmejy Pandey to represent him before the trial court. Upon reviewing the case records, the new counsel discovered that some important questions have remained to be cross-examined from the victim and her parents 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 04.02.2026 is liable to be quashed, and the trial Court may be directed to give an opportunity for re-cross-examination of the said witnesses.
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 311 of



CrPC, 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. In this context, the following opinion has been expressed by the Hon'ble Supreme Court in ***Madhab Chandra Pradhan & Ors. Vs. State of Odisha***, passed in Special Leave Petition (Crl.) No. 10082/2024 in paragraph 9 of the order dated 05.08.2024:-

“9. From a perusal of the record of the case, it is abundantly clear that ample opportunities were given to the defence counsel to cross-examine the victim. When the victim has been examined and then cross-examined at length twice already, mechanically allowing an application for recall of the victim, especially in trial of offences under Section 376 would defeat the very purpose of the statute. Hence, we find no error or illegality in the impugned order of the High Court or the Order dt. 10.10.2023 of the Special Court.”

8. 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.”

9. Looking to the material available on record and on perusal of the impugned order, it is clear that the evidence of the Victim (PW-2) was recorded on 12.11.2024, and the evidence of her father and mother was recorded on 08.01.2025. The defence was given a reasonable opportunity to cross-examine these witnesses, and they were 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.

10. 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.
11. Accordingly, the instant petition is hereby **dismissed** at motion stage itself.

Sd/-

(Sanjay Kumar Jaiswal)
Judge

Sourabh P.