



CGHC010291692026



2026:CGHC:39527

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 2020 of 2026**

1 - Rajendra Singh Sisodiya S/o Ram Singh Aged About 50 Years R/o Jamoniya Shankar P.S. Barkheda Kala District Ratlam M P

2 - Dharmendra Singh Songara S/o Narendra Singh Aged About 48 Years R/o House No. 34 Shikshak Colony Badnagar P.S. Badnagar District Ujjain M P

... Petitioners**Versus**

1 - State Of Chhattisgarh Through Station House Officer, Police Station City Kotwali, District Raigarh Chhattisgarh

... Respondent**[Cause-title taken from Case Information System (CIS)]**

 For Petitioners : Mr. Ankush Soni, Advocate
 For Respondent : Mr. Akash Agrawal, Panel Lawyer

Single Bench: Hon'ble Shri Justice Narendra Kumar Vyas**Order on Board****09.09.2026**

1. The petitioners have preferred the present petition under Section 528 of the BNSS with the prayer to quash order dated 02.05.2026, passed by the learned Special Judge (under the Chhattisgarh Protection of Depositor's Interest Act), Raigarh (CG) (for short the "trial Court") in Special Criminal Case No.03/2021, by which, the application of the petitioners filed under Section 348 of the BNSS, seeking cross-examination/re-examination of witnesses, has been rejected.

2. In the present case by way of aforesaid application, the petitioners

intend to re-examine witness- Madan Singh Patel (PW-02) [whose examination has not been concluded] and other witnesses, namely, Vijay Kumar Nayak (PW-03) Mahendra Kumar Dilawar (PW-04), Chaindas Mahant (PW-09), Kumari Jyoti Singh Sidar (PW-10) and Baniya Ram Ratre (PW-11) [whose examination has been concluded] on the ground that according to them some important questions could not be raised/putforth before the said witnesses and, due to which, their right is adversely affected. As such, it was prayed that an opportunity to re-examine the witnesses namely, Vijay Kumar Nayak (PW-03) Mahendra Kumar Dilawar (PW-04), Chaindas Mahant (PW-09), Kumari Jyoti Singh Sidar (PW-10) and Baniya Ram Ratre (PW-11) and to cross-examine witness- Madan Singh Patel (PW-02) be given to the petitioners.

3. The learned trial Court by way of impugned order dated 02.05.2026 has rejected the said application by recording its findings that all the witnesses have exclusively been examined/cross-examined and the petitioners cannot fill up the lacunae, if any, arising out of the questions put by them under the garb of application under Section 348 of the BNSS/Section 311 of the CrPC and, accordingly, it has rejected the said application. Aggrieved, the aforesaid order has been assailed by the petitioners in this revision.

4. Learned counsel for the petitioners reiterating the submission made before the trial Court would submit that in absence of re-examination of the said witnesses, their right to defence is adversely affected which is against the paramount consideration under the

criminal law justice system that the accused should be given all the opportunity to defend his case properly. He would further submit that the learned trial Court without considering these aspects of the matter mechanically rejected the same and would pray for allowing the CRMP. Learned counsel for the petitioners further submits that the matter is listed before the trial Court tomorrow (i.e. 10.09.2026) for recording of the statements of the accused persons. As such, he prayed for deferment of the proceedings before the learned trial Court.

5. On the other hand, learned State counsel opposed the revision and submits that from the copy of evidence submitted by the applicants/accused it is quite vivid that opportunity to exclusively cross-examine witness- Madan Singh Patel (PW-02) has already been afforded and so far as other witnesses are concerned it is quite vivid that no cross-examination has been done but it is on the petitioners, who have submitted application before the learned trial Court for re-examination, for which, they have not taken proper steps and not utilized the opportunity which was available to them during the trial and it is nothing but just a delaying tactics to keep the criminal trial pending. Thus, it is prayed for rejection of the revision.

6. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the record.

7. Considering the facts and circumstances of the case and also considering the fact that except witness- Madan Singh Patel (PW-02) other all witnesses- namely, Vijay Kumar Nayak (PW-03) Mahendra

Kumar Dilawar (PW-04), Chaindas Mahant (PW-09), Kumari Jyoti Singh Sidar (PW-10) and Baniya Ram Ratre (PW-11), have been extensively examined and cross-examined, as such, under the garb of Section 348 of the BNSS/Section 311 of the CrPC the petitioners cannot be given another opportunity to re-examine the witnesses and to fill-up the lacuna as held by the Hon'ble Supreme Court in case of ***Madhab Chandra Pradhan & Ors. Vs. State of Odisha*** passed in ***Special Leave Petition (Crl.) No. 10082 of 2024*** and in case of ***The State of Tripura Vs. Panna Ahmed*** reported in ***2026 INSC 584***, in which, in paragraphs 16 & 17 it has been held as under:

"16. Secondly, the principal ground urged in support of the application under Section 311 CrPC is that certain facts arising from the CDRs of the relevant mobile numbers could not be brought on record during the earlier cross-examination due to inadvertence. However, it is an admitted position that the said CDRs were filed by the prosecution itself along with the charge-sheet and formed part of the record throughout the course of the trial. The defence was thus aware of the said material and had adequate opportunity to examine the prosecutrix with reference thereto. The power under Section 311 CrPC cannot be exercised merely to fill up lacunae in the defence case.

17. Lastly, it is important to mention that the prosecutrix has already been subjected to the ordeal of deposition and cross-examination on four separate occasions before the Trial Court, in addition to having her statement recorded during investigation and before the learned Magistrate under Section 164 CrPC. Directing recall would inflict further and unjustifiable hardship upon the prosecutrix. The witnesses cannot be expected to face hardship of appearing in court repeatedly, particularly in sensitive cases. 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. In light of the aforesaid judgments of the Hon'ble Supreme Court, I am of the view that so far as rejection of applicants' application for re-examination of Vijay Kumar Nayak (PW-03) Mahendra Kumar Dilawar (PW-04), Chaindas Mahant (PW-09), Kumari Jyoti Singh Sidar (PW-10) and Baniya Ram Ratre (PW-11) is concerned, the same is legally justified and it does not warrant any interference, but so far as cross-examination of Madan Singh Patel (PW-02) is concerned, he was not subjected to cross-examination and the order-sheet of the trial Court clearly reflects that the Court hours was completed, then it was incumbent upon the trial Court to see that the witness should be bound over for the next appearance, which the trial Court miserably failed to do and consequently it is a denial to the accused to cross-examine the said witness. Therefore, for the mistake of the Court, the litigant should not suffer and, as such, this Court is of the view that one opportunity is to be granted to the petitioners/accused to cross-examine witness- Madan Singh Patel (PW-02).

9. Accordingly, it is directed that recording of statements of accused persons before the trial Court, which is fixed for tomorrow (i.e. 10.09.2026) shall be deferred for 01 month and the trial Court shall fix the date of hearing of the matter on 10.09.2026 for issuing summon to witness- Madan Singh Patel (PW-02) and, then, his evidence be recorded on or before 07.10.2026 and, thereafter, the matter be fixed for recording of statements of the accused persons under Section 313 of CrPC/351 of BNSS.

10. It is also directed that in case the prosecution does not intend to

rely upon the evidence of Madan Singh Patel (PW-02), his cross-examination is not required it be ordered by the trial Court and will proceed as per the proceedings fixed on 10.09.2026 itself and the trial Court shall proceed as per the schedule given by it i.e. recording of statements of the accused persons under Section 313 of CrPC/351 of BNSS.

11. With aforesaid observation this revision is **partly allowed**.

12. Let a copy of this order be sent to the concerned trial Court as well as to the State counsel for information and necessary action, if any.

13. Certified copy today.

**Sd/-
(Narendra Kumar Vyas)
Judge**

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