

GAHC010115622025



2025:GAU-AS:13194

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./658/2025

SULEMAN ALI
S/O- ASHAN ALI.
R/O- VILL.- NAGABANDHA .
P.S.- LAHARIGHAT.
DIST.- MORIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM.

2:ABDUL KHALEQUE
S/O- LATE LASUM UDDIN.
R/O- VILL.- NAGABANDHA.
P.S. -LAHARIGHAT.
DIST.- MORIGAON
ASSAM

Advocate for the Petitioner : MR Z KAMAR, P D CHOUDHURY,MR S J CHOUDHURY,MR.
BISWAJIT TALUKDAR

Advocate for the Respondent : PP, ASSAM, MR. U CHOUDHURY (LEGAL AID COUNSEL FOR
R-2)

**BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN**

ORDER

24.09.2025

This is an application filed under Section 528 read with Section 442 and Section 438 of BNSS, 2023.

The instant petition is filed against the order dated 08.05.2025 passed by the learned Addl. Sessions Judge-cum-Special Judge, POCSO, Morigaon in POCSO Case No. 143/2024 by which the recalling of the victim for further examination was rejected. It is noticed that the victim i.e., PW-1 was examined on 09.12.2024 and was subjected to cross-examination on the same day. The cross-examination of the said witness is reproduced below:-

“Cross by defence on behalf of the accused:-

The accused committed the incident with me in darkness.

The accused gave me Rs. 40/-.

It is not a fact that my parents tutored me to depose in the Court today.

It is not a fact that at the time of incident, the accused was in the weekly market.”

It is noticed that the said cross-examination was very short in nature and in view of the same, the accused person had filed a petition under Section 348 of the BNSS, 2023 for recalling of the said witness for further cross-examination. The said

application was filed on 08.05.2025. It is stated in the said application that there was some lapses while putting relevant questions to the said victim and certain questions were formulated which were required to be put to the victim by recalling the said witness. In the said application 13 number of questions were sought to be put to the victim and they are with regard to the date of birth of the victim, the medical treatment of the victim, accused giving money to the victim, the victim statement before the Magistrate, some contradictions, the date of incident, any related dispute which resulted in lodging of the instant case or any requirement of interpreter etc.

The learned Special Judge, POCSO, Morigaon, Assam did not entertain the said application mainly on the ground that the victim was already examined, cross-examined and discharged. The learned Court further held that question regarding mental state of the victim may not be put to her again and that other questions which were mentioned in the said application may be put to other witnesses and answers could have been obtained without questioning the victim. The learned Special Judge had however given the finding that the prayer is made by defence for re-examination and re-calling and that the power to re-examine any witness lies only with the prosecution and on that count, the said application was rejected.

Against the said order, the present application has been preferred by the petitioner for re-calling the witness for further cross-examination under Section 348 of the BNSS, 2023.

Mr. Z. Kamar, learned Legal Aid Counsel for the petitioner submits that the finding recorded by the learned Sessions Judge that the power to re-examine lies only with the prosecution is an incorrect proposition in law and the instant case involves for re-calling the witness for further cross-examination. He as such submits that the questions mentioned in the application for recalling the witness would be required for the interest of justice and the same may be allowed.

Mr. U. Choudhury, learned Legal Aid Counsel for the respondent submits and relies upon Section 33(5) of the POCSO Act, which provides that the Special Court shall ensure that the child is not called repeatedly to testify in the Court. He as such submits that calling the victim again by the Court would be in violation of the said provision. He further submits that the questions mentioned in the application filed for recalling of the witness may be put to the victim and that no further questions may be put to her which would result in harassing her. He further submits that since the victim was called for the second time before the Court, some cost may be imposed upon the petitioner.

I have heard the counsels and have gone through the records. Section 348 of the BNSS is quoted herein below:-

“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."

A bare perusal of the ingredients of 348 of the BNSS makes it crystal clear that criminal Court has ample power to summon any person as a witness or recall and re-examine such person even if the evidence on both the sides are closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, fair play and good sense. The Hon'ble Supreme Court in *P. Sanjeeva Rao Vs. State of AP*, reported in *(2012) 3 SCC (Crl) 1* had categorically held that Section 311 Cr.PC (348 of BNSS) is couched in the widest possible terms and calls for no limitation as regard to the stage at which the powers of the Court would be exercised or with regard to the manner in which it should be exercised.

In *Hoffman Adreas Vs. Inspector of Customs*, reported in *(2000) 10 SCC 430*, the Hon'ble Apex Court had observed that even in case of change of counsels, the Court can adopt a liberal view in recalling the witness for the interest of justice. It was further observed that trial is after all for the prisoners and the Court should afford every opportunity to them in the fairest manner possible.

The Hon'ble Supreme Court in yet another judgment delivered in *Swapan Kumar Chatterji Vs. CBI*, reported in *(2019) 14 SCC 328* had observed in the following terms:

"It is well settled that the power conferred under Section 311 should be

invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.....”

In the instant case, it is noticed that the cross-examination of the victim was confined only to four (4) questions which are whether the incident was committed in the darkness, whether the accused gave her money, whether her parents tutored her and whether the accused person was in the market. Apart from the same, no other questions were put to her. As such, in the interest of justice, it is therefore directed that the victim may be recalled for further cross-examination on a date to be fixed by the learned Court of Special Judge, Morigaon on the basis of the convenience of the victim. It is further directed that apart from the questions mentioned in the application, incidental questions may also be put to the victim but without any harassment to the victim whatsoever. Further, it is desirable that the petitioner may pay the expense of bringing the victim to the Court premises and for going back to her residence after the examination.

Petition is allowed.

In view of the same, the impugned order dated 08.05.2025 is set aside and quashed.

JUDGE

Comparing Assistant