

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC No. 1429 of 2026**

(In the matter of a petition under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita, 2023).

Budhram Putel @ Buduram Putel &
Ors.

Petitioner (s)

-versus-

State of Odisha & Anr.

....

Opposite Party (s)

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner (s) : *Mr. Himanshu Sekhar Mishra, Adv*

For Opp. Party(s) : *Mr. Raj Bhushan Dash, ASC*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -08.05.2026

DATE OF JUDGMENT: -25.06.2026

Dr. Sanjeeb K Panigrahi, J.

1. The petitioners are challenging the order dated 22.11.2025 passed by the learned 2nd Additional Sessions Judge, Balangir, summoning a witness under Section 311 CrPC after closure of evidence and conclusion of arguments, on the ground that the order is illegal, suffers from non-application of judicial mind, and amounts to an abuse of the process of law.

I. FACTUAL MATRIX:

2. On 31.03.2014, Bolangir Sadar P.S. Case No. 82 of 2014 was registered at the instance of the informant, Prasadi Putel, for offences punishable



under Sections 294, 323, 324, 325, 326, 307 and 506 read with Section 34 of the IPC.

3. Upon completion of investigation, charge-sheet was submitted on 29.10.2014 under Sections 294, 323, 307, 506 and 34 of the IPC.
4. After commitment, cognizance was taken by the learned Sessions Judge, Bolangir, who subsequently transferred it to the court of the learned 2nd Additional Sessions Judge, Bolangir for trial.
5. On 10.10.2025, when the case was posted for arguments after completion of the evidence of both parties and when arguments on behalf of the accused persons had substantially concluded, the prosecution filed an application under Section 311 CrPC seeking to summon one Chakradhar Putel as a witness. In the said application, it was stated that, having regard to the evidence of P.Ws. 1, 3, 7 and 9 as well as the injury report, Chakradhar Putel, the father of the informant and an injured witness, was a vital witness whose name had inadvertently not been cited in the charge-sheet during investigation.
6. The accused persons opposed the application, contending that it had been filed at a belated stage after closure of evidence and commencement of arguments. It was submitted that Chakradhar Putel was neither cited as a witness in the charge-sheet nor examined under Section 161 CrPC during investigation. According to the accused, the application was an attempt to fill up lacunae in the prosecution case



after the defence had pointed out the non-examination of any injured witness and would cause prejudice to the defence.

7. By order dated 22.11.2025, the learned 2nd Additional Sessions Judge, Bolangir allowed the prosecution's application under Section 311 CrPC and directed summoning of Chakradhar Putel as a witness.
8. Aggrieved thereby, the petitioners have filed the present petition contending that the impugned order is contrary to the settled principles governing the exercise of power under Section 311 CrPC.

II. SUBMISSIONS OF THE PETITIONERS:

9. Learned counsel for the petitioners made the following submissions in support of his contentions:
 - i. The petitioners contended that the impugned order dated 22.11.2025 is illegal, arbitrary, mechanical, suffers from material irregularities and non-application of judicial mind, is perverse and contrary to the settled principles of law, and amounts to an abuse of the process of law. It was further contended that the order has caused serious prejudice to the accused persons and is therefore liable to be set aside.
 - ii. The petitioners submitted that the proposed witness was neither examined by the Investigating Officer nor was his statement recorded during investigation. According to the petitioners, in the absence of any such foundation and when the application under Section 311 CrPC was filed at the stage of arguments, the learned trial court ought to have rejected the same. It was further contended that the



application was filed only to fill up lacunae in the prosecution case after closure of evidence and at the stage of arguments, and that its allowance has seriously prejudiced the accused persons.

- iii. It was contended that the learned trial court, while exercising power under Section 311 CrPC, failed to consider whether allowing the application after closure of evidence and during the course of arguments would cause prejudice to the accused persons.
- iv. The petitioners contended that the learned trial court committed a gross error of law by relying upon decisions which are inapplicable to the facts and circumstances of the case. It is further contended that, despite observing that the discretion under Section 311 CrPC is to be exercised judiciously having regard to the stage of the proceeding, the learned trial court failed to properly consider the objections raised by the accused persons.
- v. The petitioners contended that, after closure of evidence and during the course of arguments, when the defence pointed out the non-examination of vital witnesses, the prosecution could not be permitted to summon one such witness to fill up lacunae in its case. It was further contended that the impugned order is highly prejudicial to the accused persons and would result in serious injustice by virtually leading to a de novo trial.
- vi. The petitioners contended that the prosecution, having failed to take appropriate steps at the stages of cognizance, framing of charge and trial, could not be permitted to rectify such omissions after closure of



evidence and at the stage of arguments. It was further contended that the learned trial court ought to have accepted the objections raised by the defence and that rejection thereof is illegal, arbitrary, contrary to the settled principles of law, and amounts to an abuse of the process of law.

- vii.** The petitioners contended that the impugned order is completely one-sided and, despite being passed at a belated stage, does not make any effort to examine the matter from the side of the accused persons. It was further contended that the impugned order is not legally valid and is not judicious in nature.

III. SUBMISSIONS OF THE OPPOSITE PARTIES:

- 10.** Per contra, learned counsel for the opposite parties made the following submissions in support of his contentions:
- i.** It was submitted that on a perusal of the FIR, the evidence of P.Ws. 1, 3, 7 and 9, and the injury report, Chakradhar Putel, another injured person and the father of the informant-cum-injured Prasadi Putel, appears to be a vital witness to the case. It was submitted that his name was inadvertently omitted from the list of charge-sheet witnesses by the Investigating Officer and that his examination was necessary for a just decision of the case.
 - ii.** It was submitted that the learned 2nd Additional Sessions Judge, Balangir rightly allowed the application under Section 311 CrPC, holding that Chakradhar Putel was an injured witness named in the FIR whose examination was necessary for a just decision of the case. It



was submitted that his non-inclusion as a charge-sheet witness was an inadvertent omission on the part of the Investigating Officer and that Section 311 CrPC empowers the Court to summon a material witness where such evidence is essential for arriving at the truth and preventing failure of justice. It was further submitted that no irregularity had been committed by the prosecution in seeking his examination and that the impugned order does not warrant interference.

IV. COURT'S REASONING AND ANALYSIS:

11. Heard learned counsel for the parties and perused the material on record.
12. The core issue that arises for consideration of this Court in the present case is whether the learned 2nd Additional Sessions Judge, Balangir committed any illegality in allowing the prosecution's application under Section 311 CrPC for summoning Chakradhar Putel as a witness after closure of evidence and at the stage of arguments. For such determination, it is necessary to examine the scope and ambit of Section 311 CrPC.
13. Section 311 CrPC confers wide powers upon the Court to summon any person as a witness at any stage of any inquiry, trial or other proceeding if his evidence appears to it to be essential to the just decision of the case. The provision reads as follows:

"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."

14. The scope and ambit of Section 311 CrPC are no longer res integra. The Supreme Court has consistently observed that the provision is intended to enable the Court to discover the truth and render a just decision by bringing on record all relevant and necessary evidence. However, such power is to be exercised judiciously and cannot be invoked merely to fill up lacunae in the case of either party. In this light, in *Natasha Singh v. Central Bureau of Investigation*¹, the Supreme Court observed that an application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution or the defence, or to cause serious prejudice to the accused, or to give an unfair advantage to the opposite party.
15. In *State (NCT of Delhi) v. Shiv Kumar Yadav*², the Supreme Court has held that recall or summoning of witnesses is not a matter of course and must be based on tangible reasons showing that such evidence is essential for the just decision of the case. It was further held that the discretion under Section 311 CrPC has to be exercised judicially to prevent failure of justice and not arbitrarily.

¹ (2013) 5 SCC 741.

² (2016) 2 SCC 402.



16. Similarly, in *Swapan Kumar Chatterjee v. CBI*³, it was reiterated that the power under Section 311 CrPC should be invoked by the Court only to meet the ends of justice and for strong and valid reasons, and that it should be exercised with great caution and circumspection. It has been further observed that such power shall not be exercised if the application is found to be an abuse of the process of law.
17. The Supreme Court further elucidated the scope of Section 311 CrPC in *K.P. Tamilmaran v. State by Deputy Superintendent of Police*⁴, wherein it was observed as follows:

“48. As is clear from the language of the provision itself, there is a wide discretion with the Courts under Section 311 CrPC. These powers can be exercised suo moto or on an application moved by either side. After all, the object is that the Court must not be deprived of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination. This power under Section 311 CrPC can be invoked at any stage of the trial, even after the closing of the evidence. Section 311 CrPC can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 of CrPC. As discussed above, powers under Section 311 CrPC can either be exercised on an application moved by either side to the case or suo moto by the Court. In case a person is not listed as a witness in the charge-sheet but later, the prosecution desires to bring that person

³ (2019) 14 SCC 328.

⁴ 2025 SCC OnLine SC 958.



as an additional prosecution witness, then the prosecution can move an application to bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc. would follow as per the procedure. On the other hand, when the Court calls a person as a Court witness, there are some restrictions regarding the cross-examination of such witness."

18. The principles emerging from the aforesaid decisions are required to be applied to the specific facts of the present case.
19. The witness sought to be summoned, namely Chakradhar Putel, is admittedly an injured witness whose presence finds mention in the FIR. The prosecution has explained that his omission from the list of charge-sheet witnesses was inadvertent. On an examination of the FIR and the injury report, the learned 2nd Additional Sessions Judge, Balangir formed the opinion that the examination of Chakradhar Putel was essential for a just decision of the case.
20. The principal challenge of the petitioners rests on the fact that the application under Section 311 CrPC was filed after closure of evidence and when the matter was posted for arguments. However, as noticed above, the power under Section 311 CrPC is expressly available at any stage of the trial, the decisive factor being whether the proposed evidence is essential for a just decision of the case.



21. Moreover, the fact that Chakradhar Putel was neither cited as a charge-sheet witness nor examined under Section 161 CrPC does not operate as a bar to his examination. It is clear that where a person who ought to have been examined as a prosecution witness has been omitted from the list of witnesses due to oversight, mistake or any other reason, the Court may permit such person to be examined if his evidence is necessary for a just decision of the case. The present case stands on a similar footing.
22. In the considered view of this Court, the impugned order cannot be characterised as permitting the prosecution to fill up lacunae in its case. The witness sought to be examined is not a new or unrelated witness sought to be introduced at a late stage of the proceeding. Rather, he is an injured witness named in the FIR and his proposed evidence bears a direct nexus to the occurrence in question. The learned trial court has recorded reasons for concluding that his examination is necessary for a just decision of the case, and this Court finds no perversity or non-application of mind in the formation of such opinion.
23. As regards the plea of prejudice, it is clear that the object of Section 311 CrPC is to ensure that the Court is not deprived of material evidence necessary for arriving at the truth. Any prejudice that may arise to the accused on account of the examination of the witness can adequately be addressed by affording full opportunity of cross-examination and rebuttal in accordance with law. In the facts of the



present case, this Court is unable to hold that the impugned order occasions such prejudice as would warrant interference.

V. CONCLUSION:

24. In view of the aforesaid discussion, this Court finds no illegality, perversity or jurisdictional error in the impugned order warranting interference.
25. Accordingly, the CRLMC is **dismissed**.
26. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 25th June, 2026 /*