



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 8048/2025
CNR: RJHC021082262025 | URN: CRLMP / 18517U / 2025

Rukmuddin @ Kukku Son Of Hasum, Resident Of Village
Dhakpuri, Police Station Tizara, District Alwar (Rajasthan).

-----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Umardin Son Of Ismile, Resident Of Village Damdama,
Police Station Tizara, District Alwar, Raj.

-----Respondents

For Petitioner(s)	:	Mr. Ravi Saini, Adv. for Mr. Rajneesh Gupta, Adv.
For Respondent(s)	:	Mr. NS Dhakar, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

11/08/2026

1. The present Criminal Misc. Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred by the petitioner assailing the order dated 26.11.2025 passed by learned Additional Sessions Judge No.1, Tizara, District Khairthal-Tijara in Sessions Case No.01/2025, whereby the application filed by the petitioner under Section 348 of BNSS for recalling the witness PW-1 (complainant- Umardin) and PW-2 (victim) for their re-examination, has been dismissed.

2. Learned counsel for the petitioner submits that during pendency of the trial, the complainant as well as the victim have entered into a compromise with the petitioner and an application for attestation of the compromise has also been filed before the learned trial Court. Counsel submits that in view of the compromise, witnesses PW-1 and PW-2 are required to be again



examined by the petitioner so as to verify the factum of compromise between them. Counsel submits that the said application was dismissed by the trial Court vide order dated 26.11.2025 stating that since the offence is non-compoundable, therefore, there is no plausible ground to recall the aforesaid witnesses for re-examination.

3. Learned Public Prosecutor has opposed the petition and supported the impugned order. Counsel submits that there are serious allegations against the petitioner regarding the commission of an offence punishable under Section 64(1) of the BNS (corresponding to Section 376(1) of the IPC), which is non-compoundable and the application filed by the petitioner for recalling the aforesaid witnesses is merely an attempt to delay the proceedings pending before the learned Trial Court.

4. Heard learned counsel for the parties and perused the material available on record including the impugned order.

5. Before examining the controversy, it would be appropriate to refer to Section 348 of the BNSS (corresponds to Section 311 of the Cr.P.C), which is reproduced hereinbelow:-

"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 recall 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."



6. The provision confers power upon the Court, at any stage of an inquiry, trial or other proceeding to summon a person as a witness or to recall and re-examine a person already examined. The second limb of the provision makes it obligatory for the Court to recall a witness only when his/her evidence appears to be essential to the just decision of the case. Though the power is wide, it has to be exercised on sound judicial principles and the same cannot be exercised mechanically, particularly where the witnesses have already been examined and an adequate opportunity of cross-examination has been afforded.

7. In the present case, the primary ground raised by the petitioner for recalling PW-1 and PW-2 is that subsequent to their examination, the parties have entered into a compromise and an application for attestation of the compromise has been filed. This Court is of the opinion that mere fact that the parties have subsequently entered into a compromise cannot by itself furnish a ground for recalling a witness who has already been examined by the Court. The power under Section 348 of BNSS cannot be invoked merely to provide an opportunity to a witness to alter, improve or contradict from the statement already made before the Court.

8. The Hon'ble Supreme Court in the case of **Rama Paswan v. State of Jharkhand, (2007) 11 SCC 191** while dealing with a similar factual situation, observed as under:-

"4. At this stage an application purported to be under Section 311 of the Code was filed for recalling of the victim for further cross-examination on the ground that the parties have



settled the dispute outside the Court at the intervention of the well wishers and also the informant could not identify the persons who allegedly committed the offence due to darkness.

The trial court rejected the application by order dated 1-4-2005. The trial court was of the view that in view of the circumstances indicated it would not be proper to allow the application of the accused for recalling the victim. The same was accordingly dismissed. It was noted that the case was pending for trial for more than ten years.

5. Application in terms of Section 482 of the Code was filed before the High Court which was dismissed by the impugned order. The High Court was of the view that the compromise petition which was annexed to the petition under Section 482 of the Code referred to purported compromise between the parties. The High Court noted that Section 376 IPC is not compoundable and when the victim was examined and cross-examined during trial, the prayer to recall the victim is not acceptable. Accordingly the petition was rejected.

10. Considering the ambit of Section 311 of the Code, it does not appear to be a case where any interference is called for. What is the effect of evidence already recorded shall be considered by the trial court. Since Section 376 IPC is not compoundable in terms of Section 320 of the Code, the trial court and the High Court rightly rejected the prayer. We find no scope for interference in the appeal..."

(emphasis supplied)

9. In view of the discussion made hereinabove, this Court finds no illegality or perversity in the impugned order dated 26.11.2025



passed by learned Additional Sessions Judge No.1, Tizara, District
Khairthal-Tijara.

10. Consequently, the present Criminal Misc. Petition being
devoid of merit is hereby dismissed.

11. Stay application and pending application(s), if any, also
stand disposed of.

12. However, the observations made hereinabove shall not affect
the genuineness or veracity of the alleged compromise entered
into between the parties and shall not have any bearing on the
merits of the case.

(ANIL KUMAR UPMAN),J