



2026:AHC:74357

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 12930 of 2026

Abhay Nath Chaubey

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Upendra Upadhyay
Counsel for Opposite Party(s)	:	G.A., Suraj Kumar Singh

Court No. - 81

HON'BLE CHAWAN PRAKASH, J.

1. Heard Sri Upendra Upadhyay, learned counsel for the applicant, learned A.G.A. for the State, and Sri Suraj Kumar Singh, learned counsel for opposite party no. 3, and perused the record.

2. The present application under Section 528 B.N.S.S. has been filed for quashing the impugned order dated 07.03.2026, passed by the learned Additional Sessions Judge, Court No. 5, Varanasi, in Sessions Trial No. 81 of 2018 (State vs. Raju Nagendra and others), arising out of Case Crime No. 378 of 2015, under Sections 147, 148, 149, 302, 120B I.P.C., Police Station Chaubepur, District Varanasi, and to direct the learned trial court to accept the evidence of the witness Chhabiraj Pandey as per the applicant's application dated 13.02.2026.

3. Learned counsel for the applicant submitted that a First Information Report was lodged as Case Crime No. 378 of 2015, under Sections 147, 148, 149, 302 I.P.C., registered at Police Station Chaubepur, District Varanasi, against 4-5 unknown persons regarding the murder of applicant's father. An inquest proceeding was conducted by the Investigating Officer, and five persons, including Chhabiraj Pandey, were the panch witnesses. He was also a witness to the recovery of certain articles, including bloodstained soil. After investigation, a charge sheet was submitted. The names of 21 witnesses were mentioned in the list of witnesses; however, the name of Chhabiraj Pandey was deliberately omitted by the Investigating Officer. Subsequently, the applicant's brother approached the Apex Court seeking that the investigation be carried out by the C.B.I., as one of the accused was the local M.L.A. of the ruling party. The Apex Court constituted a Special Investigating Team for further investigation, and the statement of Chhabiraj Pandey was recorded under Section 164 Cr.P.C. before the learned Magistrate. After filing the charge sheet, charges were framed against the accused persons. Statement of PW-1 was recorded. Thereafter, an

application under Section 311 Cr.P.C. was filed to summon Chhabiraj Pandey as a witness. The said application was opposed by the accused persons i.e. opposite party nos. 2 to 4 and the learned trial court dismissed it vide order dated 07.03.2026, stating that the informant had not disclosed any reason or basis for producing Chhabiraj Pandey as witness. His name is not in the list of witnesses; therefore, without examining the other witnesses named in the charge sheet, there was no reason to examine this witness. Learned counsel further submits that the trial court erred in passing the impugned order, as the prosecution has the right to produce witnesses of its own choice. The witness Chhabiraj Pandey is important and essential for a just decision of the case; therefore, the impugned order passed by the learned trial court is liable to be set aside.

4. *Per contra*, learned counsel for opposite party no. 3 opposed the submissions made by learned counsel for the applicant, submitting that the name of Chhabiraj Pandey is not mentioned in the list of witnesses in the charge sheet. The identity of the witness is also doubtful. The proper address of the witness has not been mentioned in the application filed by the applicant. There is no illegality in passing the impugned order, and the learned trial court rightly dismissed the application under Section 311 Cr.P.C. filed by the applicant.

5. According to the facts of this case, a First Information Report was lodged by the applicant as Case Crime No. 378 of 2015, under Sections 147, 148, 149, 302 of the I.P.C., registered at Police Station Chaubepur, District Varanasi, against 4-5 unknown individuals regarding the murder of his father. An inquest proceeding was conducted by the Investigating Officer. Chhabiraj Pandey is one of the Panch witnesses. He is also a witness to the recovery of certain articles. It is undisputed that the investigation was conducted by the Special Team following an order of the Apex Court, and the statement of Chhabiraj Pandey was recorded under Section 164 Cr.P.C. before the learned Magistrate. After the investigation, a charge sheet was filed against the accused persons. However, although 21 witnesses were listed in the recovery, the name of Chhabiraj Pandey is not mentioned among them. During the trial, the statements of witnesses were recorded. Subsequently, the prosecution filed an application under Section 311 Cr.P.C., seeking permission to produce Chhabiraj Pandey as a prosecution witness. The said application was opposed by opposite parties Nos. 2 to 4. The learned trial court dismissed the application, opining that only one prosecution witness's statement had been examined, and that other witnesses named in the list should be examined first. The trial court further opined that this witness was a formal witness and only a witness to the inquest proceeding. Consequently, the application was dismissed.

6. According to the provisions of law, the prosecution generally has the discretion to decide which witnesses to call. The prosecution is not required to examine all witnesses mentioned in the charge sheet; it is only required to examine those necessary to prove the case beyond reasonable doubt. The prosecution typically arranges witnesses according to the facts of the case and in a general sequence. Ordinarily, the prosecution first examines the complainant, followed by eyewitnesses, medical experts, and the Investigating Officer. It is also settled law that if a witness's statement was recorded by the Investigating Officer during the investigation but his name is not included in the list of witnesses, the prosecution has the right to seek permission from the trial court to produce that witness as evidence. Moreover, the prosecution has discretion to examine any specific witness in any particular sequence.

7. In the present case, Chhabiraj Pandey was one of the Panch witnesses. Certain articles were recovered in his presence. His statement was also recorded under Section 164 Cr.P.C. He is an essential and necessary witness for the just decision of this case. The learned trial court erred in rejecting the said application.

8. Accordingly, the present application is **allowed**. The order dated 07.03.2026 passed by the learned Additional Sessions Judge, Court No. 5, Varanasi in Session Trial No. 81 of 2018 (State Vs. Raju Nagendra and others), arising out of Case Crime No. 378 of 2015, under Sections 147, 148, 149, 302, 120B I.P.C., Police Station Chaubepur, District Varanasi is **set aside** and the learned trial court is directed to summon the witness, Chhabiraj Pandey, for his examination.

April 7, 2026
Rmk.

(Chawan Prakash,J.)