



2025:CGHC:17987

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 1340 of 2025**

1 - Abc Prescription Of Prosecutrix In The Closed Envelope
(Prosecutrix/complainant)

... Petitioner(s)**versus**

1 - Anil Kumar S/o Jeevan Lal Lahre R/o Village Kurda, Police Station And Tahsil
Malkharouda, District Janjgir- Champa (Now Sakti) (C.G.) (Accused)

2 - State Of Chhattisgarh Through The District Magistrate, District Janjgir-Champa
(C.G.)

... Respondent(s)

For Petitioner(s) : Mr. Nitansh Kumar Jaiswal, Advocate.

For Respondent/State : Mr. Gorelal Uikey, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.**Order on Board****21/04/2025**

1. The present CRMP has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short BNSS) against the impugned order dated 20.02.2025 passed by learned Additional Sessions Judge (FTC) Sakti, District Janjgir Champa, in Special Sessions Case No. 67/2021, whereby an application under Section 348 of BNSS, 2023 filed by the petitioner has been dismissed.
2. The brief facts of the case are the respondent No.1/Anil Kumar is an accused

in special sessions case No. 67/2021 which is pending before the Learned Additional Sessions Judge, FTC, Sakti District Janjgir-Champa for the offence under Section 454, 354, 506, 323 of IPC and Section 8 of POCSO Act, the charge-sheet was filed for the aforesaid offences against the respondent No.1. The prosecutrix has been examined in the case on 30.03.2022 and she has been cross-examined by the accused at length. After examination of the some other witnesses, on 19.02.2025 the prosecutrix has filed an application under Section 348 of BNSS, 2023 for her re-cross-examination in the application she stated that earlier she has deposed on the pressure of her parents when she conceived pregnancy and her parents have thrown out from their house, she went to the house of the respondent No.1/accused and delivered a child. Since she was aged about 18 years and at the time of incident she wants to re-cross-examined on that point.

3. The said application filed by the petitioner/prosecutrix has been dismissed by the learned trial Court vide order dated 20.02.2025 which is under challenge in the present petition.
4. From perusal of the document annexed with the petition, it appears that the prosecutrix has been examined on 30.03.2022 and she was being cross-examined by the respondent No.1 at length at that time she has not disclosed that any pressure was there upon her from her parents. When some of the witnesses have been examined, after about 03 years she moved her application showing that she was aged about 18 years at the time of incident and she is required to be re-cross-examined. It is not the case the respondent No.1/accused that the victim was more than 18 years of age at the time of incident but it is the victim herself came forward for her re-cross-examination by saying that she was more than 18 years of age at the time of incident and she is residing in the house of the respondent No.1/accused.
5. In the matter of **“Ratan Lal v. Prahlad Jat” (2017) 9 SCC 340**, the Hon’ble

Supreme Court has held that:

“16. That brings us to the next question as to whether the High Court was justified in setting aside the order of the Sessions Judge and allowing the application filed by PWs 4 and 5 for their re-examination. For ready reference Section 311 of the Cr.P.C. is as under:

“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”.

17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. In *Vijay Kumar v. State of Uttar Pradesh and Anr.*, (2011) 8 SCC 136, this Court while explaining scope and ambit of Section 311 has held as under:-

“17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of CrPC and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously”.

19. In *Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Others*, (2006) 3 SCC 374, this Court has considered the concept underlining under Section 311 as under:-

“27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind”.

20. In *State (NCT of Delhi) v. Shiv Kumar Yadav & Anr.*, (2016) 2 SCC 402, it was held thus:-

“..... Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined”.

21. The delay in filing the application is one of the important factors which has to be explained in the application. In *Umar Mohammad & Ors. v. State of Rajasthan*, (2007) 14 SCC 711, this Court has held as under:-

“38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed there against and the High Court also rejected the said contention. It is not a case where *stricto sensu* the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed”.

22. Coming to the facts of the present case, PWs 4 and 5 were examined between 29.11.2010 and 11.3.2011. They were cross-examined at length during the said period. During the police investigation and in their evidence, they have supported the prosecution story. The Sessions Judge has recorded a finding that they were not under any pressure while recording their evidence. After a passage of 14 months, they have filed the application for their re-examination on the ground that the statements made by them earlier were under pressure. They have not assigned any reasons for the delay in making application. It is obvious that they had been won over. We do not find any reasons to allow such an application. The Sessions Judge, therefore, was justified in rejecting the application. In our view, High Court was not right in setting aside the said order. ”

6. On perusal of the impugned order makes it clear the prosecutrix was examined and re-cross-examined fully long back in the year 2022. A detailed cross-examination was put to prosecutrix and she gave all the questions put to her but later on after about 03 years she herself has moved an application for her re-cross-examination. The application filed by her is contrary to the

evidence of the prosecutrix PW-2. After a passage of time when she filed an application on the ground that she aged about 18 years on the date of incident is based on the birth certificate produced by her as Annexure A/3 in the petition. From perusal of the said birth certificate it itself appears that the said birth of the victim has got registered with the registering authority on 27.09.2024 i.e. after two and half year of her deposition. No reason has been assigned for delay in moving the application by the prosecutrix. The entire scenario shows that she has been won over by the defence. It is settled law that the benefit of Section 348 of BNSS (311 of Cr.P.C.) cannot be extended to the parties to fill up the lacuna.

7. The provisions of Section 348 of BNSS, 2023 can be invoked only in order to meet the ends of justice for strong and valid reasons with great caution and circumspection and not to permit the parties to call the prosecutrix again and again for re-cross-examination.
8. In ***Manghi @ Narendra v. State of M.P., (2005) 4 MPLJ 136, the Madhya Pradesh*** High Court has held that “once the witness is examined as a prosecution witness, he cannot be recalled for examination/cross-examination, merely because he filed affidavit contrary to his deposition made before the Trial Court”. Unfair advantage cannot be given to any of the parties and no one can be permitted to recall the witness for further re-cross-examination, merely on the ground that an application has been filed by the prosecutrix after her deposition before the Trial Court.
9. In view of the above discussions, this Court does not find any error in the impugned order and is not inclined to interfere with it. Accordingly, the petition, being sans merits, is hereby dismissed.

Sd/-
(Ravindra Kumar Agrawal)
 Judge