



2026:AHC:86567

AFR

RESERVED ON 10.03.2026

DELIVERED ON 20.04.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 50778 of 2025

Smt. Ramvati

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Saksham Srivastava
Counsel for Opposite Party(s)	:	G.A.

Court No. - 78

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard Sri Saksham Srivastava, learned counsel for the applicant, learned AGA-I Shri Ratan Singh for the State and perused the record.
2. The present application under section 528 BNSS has been filed with a prayer to set aside the order dated 10.11.2025 passed by the Court of learned Additional District and Sessions Judge (4th), District Gautam Budh Nagar in Session Trial No. 50 of 2020 (State Vs. Sukhmeet and Others) in Case Crime No. 1310 of 2019 under sections 302 and 201 IPC, Police Station Surajpur, District Gautam Budh Nagar, pending before the concerned Court, whereby the learned Court has rejected the application moved by the applicant under section 311 Cr.P.C in a very routine and mechanical manner which is being annexed as Annexure No.2 to this present application, and to further direct the Court of learned Additional District and Sessions Judge (4th) District Gautam Budh Nagar to allow the P.W.-3 i.e., to be re-examined during the pendency of the aforesaid Session Trial.
3. To narrate the brief facts, the applicant Ramvati is the mother of the deceased Rahul who moved an application dated 14.08.2025 (38Kha) under section 311 Cr.P.C. praying for the re-examination of P.W.-3, Rishipal Singh (Father of the deceased).

4. In the instant matter, an FIR No. 1310 of 2019 was lodged on 03.09.2019 at 14:28 under sections 302, 201 I.P.C. by one Shri Harendra Singh at Police Station Surajpur, District Gautam Budh Nagar against unknown persons stating that two dead bodies were found lying in the jungle at village Jumpat in the field of Jagat Singh, near the service road. Both the deceased appeared to have been fire shot and thrown away in the field. During investigation, it was found that one of the deceased was son of the applicant namely Rahul and the other was Kuldeep Nagar, s/o Hari Narayan Singh. After the investigation, the charge sheet was submitted against the respondent-accused Nos. 2 to 4, namely, Sukhmeet, Yogesh alias Bachhi and Saurabh Rana.

5. During trial, the examination-in-chief of P.W.-3, Rishipal (father of the deceased Rahul) was recorded on 23.09.2021 and cross-examination was recorded on 28.07.2022.

6. The prosecution witness No.3, Rishipal, in his examination-in-chief supported the prosecution case but in his cross-examination, did not support the prosecution case and had retracted and resiled from his previous testimony. The said witness was not declared hostile and was not re-examined.

7. Thereafter, on 14.8.2025, the applicant moved an application under section 311 Cr.P.C. (38-kha) for recalling the prosecution witness, P.W.-3 Rishipal and to re-examine him on certain grounds as her husband, Rishipal did not swear the evidence out of his own free will and volition and had deposed under the coercion and threat meted out to him by local villagers who had close affinity with the accused persons and the accused persons posed a threat by going to the extent of eliminating him. An affidavit dated 06.10.2025 43-kha supporting the said application sworn by P.W.-3, Rishipal was filed after a gap of about 50 days affirming the facts mentioned in the application.

8. The learned Trial Court, after hearing the counsel for the applicant and the counsel for the accused rejected the application vide order impugned dated 10.11.2025 on the ground that P.W.-3, in his examination-in-chief dated 23.09.2021, had fully supported the prosecution case and due to paucity of time, the said witness was cross-examined on 28.07.2022 who retracted in his cross-examination and did not support the prosecution case and further deposed that he had given his testimony without any fear

or coercion and was true and correct.

9. Per contra, learned State Counsel has opposed the aforesaid facts.

10. Upon having heard the learned counsel appearing for the parties and having gone through the material on record, it transpires that though the said witness in his cross-examination had completely resiled from the evidence adduced by him during his examination-in-chief but was not declared hostile by the prosecution and was neither re-examined. After a gap of about 3 years, the applicant moved an application under section 311 Cr.P.C for the re-examination of P.W.-3 to fulfil the lacuna and to make improvements. The trial is still at the stage of evidence, eight prosecution witnesses have been examined and no evidence under section 313 Cr.P.C. has been recorded.

11. It has been noticed that previously on 05.10.2023, the applicant moved an application under section 311 Cr.P.C. for re-examining P.W.-3 but no fact was disclosed that P.W.-3 was under threat perception or coercion and the said application was not moved by the public prosecutor but was moved under the signature of the private counsel and no signature of the prosecution witness or the first informant was found and the same was rejected.

12. Subsequently, applicant moved another application dated 14.08.2025 (38kha) through Assistant Public Prosecutor wherein the parties have been heard and impugned order has been passed rejecting the application on merit.

13. In the backdrop of aforesaid facts, it can be said that the application (38-kha) has been moved by the applicant, Smt. Ramwati (mother of deceased, Rahul) who is neither the first informant nor an eye witness nor has been examined as a prosecution witness. The P.W.-3, Rishipal (father of the deceased-Rahul) is a material witness and he in his examination-in-chief dated 23.09.2021 had supported the prosecution case. Thereafter, after a gap of ten months and five days, the said witness was cross-examined on 28.7.2022 wherein the witness retracted and resiled from his previous testimony. Despite the said fact, the P.W.-3 was not declared hostile by the prosecution and was neither re-examined. The trial is in progress and the application dated 14.08.2025 under section 311 Cr.P.C has been moved by the applicant at a belated stage after a gap of more than three years to fulfil the lacuna in a prosecution case and to reopen

and to avail another opportunity to reconcile the discrepancies if any between the statements in the examination-in-chief and cross examination and further to explain any statement inadvertently made in cross examination and to remove any ambiguity in the deposition or suspicion caste on the evidence by cross examination and to re-examine P.W.-3, which may cause serious prejudice to the accused and may result in the miscarriage of justice. It appears that the applicant-mother has been sponsored by P.W.-3, Rishipal to rectify and improve the misgivings that happened while adducing his evidence during his testimony. The records reveal that applicant, Smt. Ramwati moved the application under section 311 Cr.P.C. on 14.08.2025 and the affidavit supporting the application has been sworn by P.W.-3 on 06.10.2025 after a gap of about 50 days with an averment that the contents of the application were in his personal knowledge but not a single instance i.e. date, time, place and other particulars has been disclosed or claimed that the evidence tendered during examination in chief or cross examination was not out of his own free will and volition but due to threat and coercion meted out to him in past five years from the accused or his associates though the applicant and her husband, Rishipal had ample opportunity to lodge the complaint or raise their grudge before the learned Trial Judge or to the Police Officers or to any prosecution agency but both remain indifferent and silent throughout.

14. In the recent pronouncement of the Supreme Court in the case of **Raja Ram Prasad Yadav vs. State of Bihar and Another, 2013 (14) SCC 461**, the Court has very exhaustively discussed the law on the subject of Section 311 Cr.P.C. which reads as follows:

“A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a pre-fix to “court”, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in

Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.

15. In this context, we also wish to make a reference to certain decisions rendered by this Court on the interpretation of Section 311 Cr.P.C. where, this Court highlighted as to the basic principles which are to be borne in mind, while dealing with an application under Section 311 Cr.P.C. In the decision reported in Jamatraj Kewalji Govani vs. State of Maharashtra - AIR 1968 SC 178, this Court held as under in paragraph 14:-

*“14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction.”
(Emphasis added)*

16. In the decision reported in Mohanal Shamji Soni vs. Union of India and another - 1991 Suppl.(1) SCC 271, this Court again highlighted the importance of the power to be exercised under Section 311 Cr.P.C. as under

in paragraph 10:-

“10....In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be

rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”

17. *In the decision in Raj Deo Sharma (II) vs. State of Bihar - 1999 (7) SCC 604, the proposition has been reiterated as under in paragraph 9:-*

“9. We may observe that the power of the court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the five-Judge Bench in A.R. Antulay case nor in Kartar Singh case such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the court to be essential to the just decision of the case it is the duty of the court to summon and examine or recall and re-examine any such person.” (Emphasis added)

18. *In U.T. of Dadra and Nagar Haveli and Anr. vs. Fatehsinh Mohansinh Chauhan - 2006 (7) SCC 529, the decision has been further elucidated as under in paragraph 15:-*

“15. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as “filling in a lacuna in the prosecution case” unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice.” (Emphasis added)

19. *In Iddar & Ors. vs. Aabida & Anr. - AIR 2007 SC 3029, the object underlying under Section 311 Cr.P.C., has been stated as under in paragraph 11:-*

“11. 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 for 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 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 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.” (Emphasis added)

20. *In P. Sanjeeva Rao vs. State of A.P.- AIR 2012 SC 2242, the scope of Section 311 Cr.P.C. has been highlighted by making reference to an earlier decision of this Court and also with particular reference to the case, which was dealt with in that decision in paragraphs 13 and 16, which are as under:-*

“13. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs, Amritsar (2000) 10 SCC 430. The following passage is in this regard apposite:

“In such circumstances, if the new counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.”

16. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.” (Emphasis added)

21. *In a recent decision of this Court in Sheikh Jumman vs. State of Maharashtra - (2012) 9 SCALE 80, the above referred to decisions were followed.*

22. *Again in an unreported decision rendered by this Court dated 08.05.2013 in Natasha Singh vs. CBI (State) – Criminal Appeal No.709 of 2013, where one of us was a party, various other decisions of this Court were referred to and the position has been stated as under in paragraphs 14 and 15:*

“14. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of

such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal, however, must be given to the other party.

The power conferred under Section 311 Cr.P.C. must, therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.

The very use of words such as 'any Court', 'at any stage', or 'or any enquiry', trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should, therefore, be whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

15. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr., AIR 1958 SC 376; Zahira Habibulla H. Sheikh & Anr. v.

State of Gujarat & Ors. AIR 2004 SC 3114; Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors, AIR 2006 SC 1367; Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.) (2007) 2 SCC 258; Vijay Kumar v. State of U.P. & Anr., (2011) 8 SCC 136; and Sudevanand v. State through C.B.I. (2012) 3 SCC 387.)"

23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

- b) *The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) *If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.*
- d) *The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.*
- e) *The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*
- f) *The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) *The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*
- h) *The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- i) *The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*
- j) *Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.*
- k) *The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*
- l) *The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

15. In view of the foregoing discussions and applying the various principles set out above, the factors noted by the Trial Court and the conclusion drawn are all appropriate and just and the order impugned does not call for any interference. The Trial Court shall proceed with the trial from the stage it was left and conclude the same, expeditiously, in accordance with law.

16. Accordingly, the application u/s 528 B.N.S.S. is dismissed.

(Nand Prabha Shukla,J.)

April 20, 2026

Puspendra