



2026:DHC:8514



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 28.09.2026

CNR No.DLHC010464312026

+ CRL.M.C. 7250/2026, CRL.M.A. 30318/2026

SURENDER SOOD & ORS.

.....Petitioners

Through: Mr. R.K. Thakur, Mr. Rishab Kr.
Thakur, Ms. Aditi and Ms. Kriti Negi,
Advs.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State.
Inspector Sanjeev Kumar, PS Special
Cell.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") assailing an order dated 11.07.2025 ("Impugned Order"), passed by learned CJM, Patiala House Courts, New Delhi ("Trial Court") in connection with FIR No.829/2006, P.S. Paschim Vihar (investigated by Special Cell).
2. Vide the Impugned Order, the Trial Court dismissed the application filed by the petitioners under Section 311 of the Code of Criminal Procedure (Cr.P.C.) for recall of PW-3 / Savitri Devi for cross-examination.
3. It is pointed out that part examination-in-chief of PW-3 was held on 23.03.2025 and thereafter continued on 04.04.2025, on which date, the examination-in-chief of PW-3 was concluded.



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4. Learned counsel for the petitioners submits that, at that point of time, he was held up in another Court, and thus, PW-3 could not be cross-examined and was discharged without any cross-examination.

5. The petitioners thereafter moved an application under Section 311 Cr.P.C. before the Trial Court seeking recall of PW-3 for the purpose of cross examination. However, *vide* the Impugned Order, the said application has been dismissed.

6. Learned counsel for the petitioners submits that the prosecution witnesses have been examined and cross-examined on the same day except for PW-3; it is contended that the delay in proceedings is not due to the defense counsel. It is further submitted that PW-3 is a material witness, and that the cross-examination of PW-3 could not take place due to the unforeseen inability of learned counsel for reasons beyond his control.

7. The principle governing an application under Section 311 Cr.P.C. has been noticed by the Supreme Court in **Rajaram Prasad Yadav v. State of Bihar**, (2013) 14 SCC 461, wherein it has been observed as under:

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

17.1. 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?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. 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.

17.4. 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 for such facts, which will lead to a just and correct decision of the case.



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17.5. 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.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. 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.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. 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.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, 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.

17.11. 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.

17.13. 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.

17.14. The power under Section 311 CrPC 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.

18. Keeping the above principles in mind, when we examine the case on hand, at the very outset, it will have to be stated that the High Court, while passing the impugned order [Suresh Prasad v. State of Bihar, Criminal Misc. Petition No. 12454 of 2010, order dated 9-12-2010 (Pat)] has completely ignored the principal objectives with which the provision under Section 311 CrPC has been brought into the statute book. As rightly argued by the



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learned counsel for the appellant, at the foremost when the trial was very much in the grip of the trial court, which had every opportunity to hear the appellant, the State, as well as the second respondent, had not even bothered to verify whether the appellant, who was facing criminal trial was impleaded as a party to the proceedings in the High Court. A perusal of the order discloses that the High Court appears to have passed orders on the very first hearing date, unmindful of the consequences involved. The order does not reflect any of the issues dealt with by the learned Sessions Judge, while rejecting the application of the respondents in seeking to re-examine PW 9, the second respondent herein. Though orders could have been passed in this appeal by remitting the matter back to the High Court, having regard to the time factor and since the entire material for passing final orders are available on record and since all parties were before us, the correctness of the order of the Sessions Judge dated 18-11-2009, can be examined and final orders can be passed one way or the other in the present criminal appeal itself.”

8. In the present case, what weighs with this Court is the consequences that would follow on account of denial of cross-examination of PW-3 for reasons which were beyond the control of the petitioners.
9. Admittedly, PW-3 is not a formal witness. Further, it is not disputed that all the other prosecution witnesses were cross-examined on the date of their examination, and that, no pattern of delay by the defense is noticed in the present factual conspectus.
10. Pertinently, the default in the present case is confined to a single date; PW-3 was discharged on the very same day on conclusion of her examination-in-chief.
11. It is also submitted that, in any event, the cross-examination of PW-1 also remains pending till date.
12. Testimony that has not been tested by cross-examination is a material consideration in trial. Permanent foreclosure of the right to cross-examination on account of a single absence is inherently prejudicial to the petitioners. The considerations for achieving expeditious conclusion of the



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trial need to be weighed against this prejudice, especially, taking into account the fact that cross-examination of PW-1, who is the most material witness in the present case, is yet to take place.

13. Considering the circumstances, the Impugned Order dated 11.07.2025 is set aside to the extent it declines recall of PW-3 for cross examination.

14. The application under Section 311 Cr.P.C. is allowed, subject to payment of costs of Rs.15,000/-, payable to Delhi High Court Legal Services Committee within a period of two weeks from today.

15. Proof of deposit of the same shall be filed before the Trial Court. Upon the same being done, the Trial Court shall summon PW-3 for cross-examination on a date to be fixed by it.

16. It is agreed that no adjournment shall be sought by the petitioners and an endeavor shall be made to conclude the cross-examination of the PW-3 on the date fixed.

17. The petition is disposed of in the above terms. Pending application stands disposed of.

18. Nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy.

SACHIN DATTA, J

SEPTEMBER 28, 2026/cl