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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 21.01.2026

+ **CRL.M.C. 537/2026, CRL.M.A. 2162/2026 & CRL.M.A. 2161/2026**

RAM SWAROOP GUPTA & ORS.

.....Petitioners

Through: Mr. Ajatshatru Singh Rawat and Ms.
Naimishi Verma, Advocates

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for the
State

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. Petitioners/accused seek setting aside of order dated 28.08.2024 of learned trial court, whereby their application under Section 311 CrPC for recall of PW-1 Jagmohan Gupta for further cross-examination was dismissed.

2. Learned APP for State accepts notice. Mr. Jagmohan Gupta also has been impleaded in the present petition as respondent no. 2 but learned counsel for petitioners/accused submits that same was done only out of abundant precaution and otherwise, he is not a necessary party, it being a



State case. As requested, respondent no. 2 is deleted from the array of parties.

3. Learned APP for State in all fairness does not oppose this petition on account of following discussion.

4. Ordinarily, dismissal of an application under Section 348 of BNSS (*earlier Section 311 CrPC*) being an interlocutory order, the revision petition would be barred by Section 438(2) of BNSS [*earlier Section 397(2)CrPC*] and what is explicitly barred, cannot be granted backdoor entry by invoking inherent powers. But this bar on the inherent powers is subject to a rider, whereby the High Court must examine if any gross injustice has been done. If the High Court arrives at a conclusion that the interlocutory order caused gross injustice, it would not only be justified for the High Court, but also it would be a duty of the High Court to invoke inherent powers and prevent injustice. The inherent powers wherever exist, are accompanied with an attendant duty to invoke the same to meet ends of justice.

5. In the present case, the gross injustice which appears to have been caused to the petitioners/accused is that on 02.09.2023 when PW-1 Mr. Jagmohan Gupta appeared for the first time for his cross-examination, the present petitioners/accused persons were not accompanied with their counsel. Even any proxy counsel was not accompanying them and they were called upon to cross-examine PW-1. As expected, the petitioners/accused persons being lay persons were unable to cross-examine PW-1, so the



learned trial court closed the testimony of PW-1 recording 'Nil. Opportunity given'.

6. Thereafter, the petitioners/accused filed an application under Section 311 CrPC, explaining the reason for inability of the defence counsel to appear on 02.09.2023. It is also trite that power under Section 311 CrPC can be invoked by the trial court on its own as well without waiting for an application from either side. In the present case, even the application was filed. Although, learned trial court was not convinced with the reasons advanced to explain failure of defence counsel to appear, but even after that, the learned trial court could have invoked the power on its own to ensure no injustice was caused.

7. In the trial proceedings where the accused in the absence of defence counsel, is called upon to cross-examine a witness, it is not just the accused who suffers injustice. It is the entire trial which gets vitiated. Presence of legal assistance for the accused facing a trial is the core element of fair trial.

8. In a case where the trial court is convinced that the accused is somehow protracting the proceedings in order to frustrate the prosecution witnesses, the trial court instead of calling upon the accused in the absence of legal assistance to cross-examine the witness, should either appoint an *amicus curiae* or should direct the local legal services authority to send some legal aid counsel. The purpose is that the fairness and purity of trial must be kept. In addition, nothing prevents even the trial court to put any questions to the prosecution witness because purpose of such trial is to



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arrive at the truth. In the name of expeditious trial, fairness of the trial cannot be allowed to become a casualty.

9. Therefore, the impugned order is set aside and trial court is directed to grant another opportunity to the petitioners/accused through their counsel to cross-examine PW-1 Mr. Jagmohan Gupta. The next date before the learned trial court is informed to be 07.02.2026. On the next date, the learned trial court shall fix fresh date for further cross-examination of PW-1 Mr. Jagmohan Gupta, according to the calendar of the learned trial court. Accordingly, the petition and the accompanying applications stand allowed.

10. Copy of this order be sent to all Principal District & Sessions Judges in Delhi with the request to circulate the same amongst all Courts dealing with criminal trials so that such situation does not arise again.

**GIRISH KATHPALIA
(JUDGE)**

JANUARY 21, 2026
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