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

% *Date of decision: 25th July, 2025*

+ CRL.M.C. 4938/2025, CRL.M.A. 21399/2025 & CRL.M.A.
21400/2025

ANKUR ARORAPetitioner

Through: Mr. Harmet Singh Gulati & Mr.
Anchit Sangwan, Advocates.

versus

THE STATE OF NCT OF DELHIRespondent

Through: Mr. Digam Singh Dagar, APP with SI
Dheer Singh, PS Anand Vihar.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (ORAL)

1. Petition herein is directed against two orders dated 11.07.2025 and 18.07.2025 passed by the Learned ACJM, Shahdara, Karkardooma Courts, Delhi, in criminal proceedings arising from FIR No. 310/2010, PS Anand Vihar, under Sections 323/325/341/506/509/34 of the IPC, whereby two applications, both under section 311 of the Cr.P.C. (348 of BNSS) filed one after the other in a short span of one week.

2. Aggrieved against both the above impugned orders, petitioner (an accused and under trial) pleads that has been falsely implicated. He has committed no offence as alleged by the complainant in the ongoing trial. After framing of the charges, the examination-in-chief of PW-1 Dr. B.K.



Gupta was recorded on 14.08.2013 and his cross-examination was deferred on the request of the defence counsel as he wanted to cross-examine PW-1 Dr. B.K. Gupta and his son PW-2 Dr. Mohit Gupta (complainant) together. On the next date of hearing i.e. 30.10.2013, PW-2 Dr. Mohit Gupta was called and his examination-in-chief was recorded. He was then partly but extensively cross-examined, and his further cross-examination was deferred to 23.07.2014. On 23.07.2014, he was further cross-examined and the matter was again deferred to 25.02.2015. On 25.02.2015, both PW-1 Dr.B.K. Gupta and PW-2 Dr. Mohit Gupta were present, but the petitioner's counsel was engaged in a bail matter in Rohini Court. His proxy counsel requested the Ld. Predecessor to adjourn the matter for their cross-examination, but the request was declined and the opportunity for cross-examination was marked 'Nil'.

2.1. Thereafter, the petitioner moved an application under Section 311 Cr.P.C. for recalling both witnesses for cross-examination. However, due to a typographical error in the application, only PW-1 Dr. Mohit Gupta was mentioned instead of PW-1 Dr. B.K. Gupta and PW-2 Dr. Mohit Gupta. The petitioner's counsel requested the Ld. Predecessor to recall both witnesses, and the application was allowed, but inadvertently the order sheet mentioned only PW-1 Dr. Mohit Gupta instead of PW-1 Dr. B.K. Gupta and PW-2 Dr. Mohit Gupta due to an error by the court steno. The counsel remained under the impression that the Hon'ble Trial Court had allowed the recall of both witnesses. Subsequently, the cross-examination of PW-2 Dr. Mohit Gupta was conducted on 08.07.2015, and other witnesses were cross-examined by the associate counsel, except PW-1 Dr. B.K. Gupta. The associate counsel



was under the mistaken belief that both PW-1 and PW-2 had already been cross-examined. Thereafter, the statement of the accused and defence evidence were also conducted by the associate counsel.

2.2. At the time of final arguments, the petitioner's counsel discovered that PW-1 had not been cross-examined while preparing the final submissions. Upon inspecting the judicial file, the counsel requested the Hon'ble Trial Court to recall PW-1 for cross-examination. However, the request was declined by the court vide order dated 11.07.2025, and the matter was listed for final arguments on 18.07.2025 as a last opportunity. On 18.07.2025, the petitioner again moved an application for recalling PW-1 Dr. B.K. Gupta, citing reasonable facts and relevant legal precedents, but this application was also dismissed by the Trial Court by order dated 18.07.2025.

3. Hence the instant petition.

4. In the aforesaid backdrop I have heard learned counsel for the petitioner and the learned APP and perused the trial court record.

5. Learned counsel for the petitioner would urge on the line of the grounds taken in the petition and argue that the Trial Court failed to exercise its judicial mind and dismissed both the applications against the petitioner without properly considering the facts and evidence on record. The petitioner provided valid reasons for failing to cross-examine PW-1, whose testimony is crucial to the prosecution's case.

5.1. He would argue that the Trial Court overlooked that PW-1's cross-examination was initially deferred by the defence to examine PW-1 and PW-2 together. The Court failed to note that PW-2's cross-examination was



conducted over multiple dates, which was part of the defence strategy.

5.2. Furthermore, on 25.02.2015, the petitioner's counsel was unavailable due to another case, and the proxy counsel's request for adjournment was denied, resulting in loss of cross-examination opportunity.

5.3. Also, he would contend that the Court did not acknowledge the typographical error in the first Section 311 application and wrongly assumed PW-1 had been recalled. The defence associate counsel wrongly believed PW-1 had been cross-examined, leading to the completion of evidence without his cross-examination. On 16.12.2022, it was recorded that no further prosecution witnesses remained, reflecting the oversight regarding PW-1's unexamined status. It was thus that the matter progressed to the accused's statement, defence evidence, and final arguments without realization that PW-1 remained unexamined. The defence only realized the lapse while preparing for final arguments on 11.07.2025 and requested to recall PW-1, which was declined.

5.4. Thus, recalling PW-1 is necessary to ensure a fair and just decision of the case and the delay, if any, was due to a genuine misunderstanding and not an attempt to delay proceedings. Section 311 Cr.P.C. grants wide discretion to ensure justice, which the Trial Court failed to exercise appropriately. Section 311 should be exercised only when essential for justice; in this case, it is indeed essential. The applications filed by petitioner disclose compelling and exceptional reasons to recall PW-1.

5.5. Moreover, counsel for petitioner would argue that not allowing PW1's recall prejudices the petitioner, as PW-1 was not cross-examined at all. The application under Section 311 discloses the necessity of recalling PW-1 for a



fair decision but yet it was overlooked. The Trial Court, therefore, erred in rejecting the application without accounting for the prejudice caused to the petitioner. The impugned order lacks proper judicial reasoning and fails to assess the necessity of PW-1's recall.

5.6. Finality of proceedings should not override the fact that PW1 has not been cross-examined even once. Denying the petitioner the opportunity to cross-examine PW-1 creates an imbalance and violates the right to fair trial.

5.7. He would cite various judgments including *Vijay Kumar v. State of U.P.*¹; *Zahira Habibullah Sheikh v. State of Gujarat*²; *State (NCT of Delhi) vs. Shiv Kumar Yadav*³; *Manju Devi v. State of Rajasthan*⁴; *Swapan Kumar Chatterjee vs. Central Bureau of Investigation*⁵; *Harendra Rai v. State of Bihar*⁶ and *Satbir Singh v. State of Haryana*⁷ to urge that Section 311 ensures no failure of justice due to omission or error and in clearing ambiguities and maintaining fairness, at any stage, when essential for a just decision, regardless of long delay, if otherwise justified by facts.

6. Opposing the petition, learned APP would argue that no interference by this court is warranted and both the applications of the petitioner were rightly dismissed by the learned trial court for the reasons stated in the impugned orders which are self speaking and need no further explanation.

7. First and foremost let us see the two impugned orders which for ease of reference are extracted here in after.

¹ (2011) 8 SCC 136.

² (2006) 3 SCC 374.

³ (2016) 2 SCC 402.

⁴ (2019) 6 SCC 203.

⁵ (2019) 14 SCC 328

⁶ 2023 SCC OnLine SC 1023.

⁷ 2023 SCC OnLine SC 1086.



7.1. Vide order dated 11.07.2025, the learned MM stated as under:

“Matter is listed for final arguments today.

At this stage, it is submitted by Ld. Defence Counsel that an application under Section 311 Cr.P.C. was filed on behalf of accused Ankur Arora which was allowed vide order dated 23.03.2015. That the said application under Section 311 Cr.P.C. was filed for recalling PW-1 Dr. B.K. Gupta, however, inadvertently, due to clerical error name of Mohit Gupta was mentioned in the application instead of Dr. B.K. Gupta.

It is further stated that in the said application the serial number of the witness sought to be recalled has been correctly mentioned as PW-1 but the name of the witness is mentioned incorrectly as Mohit Gupta. That since at that time examination of PW Mohit Gupta was already underway, therefore, there was no question of re-calling him. That the said fact escaped the notice of this court due to which cross-examination of PW-1 Dr. B.K. Gupta could not be conducted and the court proceeded to record the evidence of PW Mohit Gupta instead. That although, the aforesaid fact was brought to the knowledge of the court at that time but inadvertently, PW-1 Dr. B.K. Gupta could not be recalled. Thus, prayer is made that since the application under Section 311 Cr.P.C. of accused has already been allowed on 23.03.2015, therefore, now PW-1 Dr. B.K. Gupta be recalled for his cross-examination.

Strongly objected to by the PW Mohit Gupta and Ld. APP for the State.

Submissions heard. Record perused.

Perusal of record reveals that on 25.02.2015, PW-1 Dr. B.K. Gupta and PW-2 Dr. Mohit Gupta, both were present before the court for their cross-examination, however, an adjournment was sought by Ld. proxy counsel for the accused persons and the said request was declined by the Ld. Predecessor judge and both the aforesaid witnesses were cross-examined as 'Nil. Opportunity given', and accordingly both PW1 and PW2 were discharged. Thus, it is not the case that the cross-examination of PW Dr. Mohit Gupta was underway/continuing since he was already cross-examined as



Nil and thereafter discharged vide order dated 25.02.2015. An application under Section 311 Cr.P.C. dated 09.03.2015, was filed on behalf of accused with the heading, 'Application under Section 311 Cr.P.C. for recalling witness PW-1 Mohit Gupta for cross-examination; on behalf of accused. The said application was allowed vide order dated 23.03.2015, and accordingly, PW-2 Dr. Mohit Gupta was recalled for his cross-examination and was accordingly cross examined and was discharged on 08.07.2015. As per the record no such submission was made by Ld. Defence Counsel at the time of cross-examination of PW-2 Mohit Gupta on 08.07.2015 upto till date that it was PW-1 Dr. B.K. Gupta who was sought to be recalled and not PW-2 Dr. Mohit Gupta. It is to be noted here that a period of more than 10 years has passed there since and the case is already at the stage of final arguments when the aforesaid submission is being made. From the aforesaid conduct, this court is of the view that the said submission is being made just to delay the proceedings of this case without any basis. The present case pertains to the year 2010 and is more than 14 year old. In view of the aforesaid facts and circumstances, this court is not inclined to recall PW-1 Dr. B.K. Gupta at such a belated stage. Therefore, the request of Ld. Defence Counsel is declined.

Be put up for final arguments on 18.07.2025. It shall be last opportunity.”

7.2. Subsequent order dated 18.7.2025, reads as under:

“An application under Section 311 CrPC read with Section 348 of BNSS is filed on behalf of the accused Ankur Arora thereby seeking to recall PW-1 BK Gupta for his cross examination.

It is stated that on 25.02.2015 PW-1 BK Gupta and PW-2 Mohit Gupta had appeared before the court but since the counsel for the accused was engaged in another matter in Rohini Courts therefore the request of proxy counsel to adjourn the matter for cross examination was declined by the court and opportunity of their cross examination was recorded as 'Nil'. That thereafter an application under Section 3 11



CrPC for recalling both the aforesaid witnesses was filed on behalf of the accused however due to typographical error instead of mentioning PW-1 BK Gupta and PW-2 Mohit Gupta, only PW-1/Mohit Gupta was mentioned in the said application. That although the counsel for accused had requested to the Ld. Predecessor Judge to recall both the witnesses for their cross examination and the said application was also allowed but inadvertently in the order sheet only PW-1/Mohit Gupta was mentioned by the steno of the court instead of mentioning PW1/BK Gupta and PW2/Mohit Gupta. That the counsel for accused remained under the impression that the court had mentioned names of both the witnesses in the order sheet. Thereafter, PW2/Mohit Gupta was cross examined on 08.07.2015 by the counsel for accused whereas the remaining witnesses were cross examined by the associate counsel and the said associate counsel remained under the impression that both PW-1 and PW-2 have already been cross examined. Thereafter prosecution evidence was closed on 16.12.2022, statement of accused under Section 313 Cr.P:C. was recorded on 14.02.2023 and defence evidence was also closed on 23.11.2024. That on 11.07.2025, while the counsel for accused was preparing for final arguments then this fact of non cross examination of PW-1 came to the knowledge of the counsel for accused. Hence the present application.

On the other hand. Ld. APP for State has opposed the present application on the ground that the same has been filed at a belated stage.

Arguments heard. Case file perused.

It is pertinent to note here that on the last date of hearing i.e., on 11.07.2025, these submissions were made by Ld. Defence Counsel Sh. Gaurav Dalal, and the said request has already been declined by this court vide order dated 11.07.2025 itself. In the present application no new fact has been mentioned by Ld. Defence Counsel. It is to be noted here that in the present matter PE was closed vide order dated 16.12.2022 but no such submission was made by Ld. Defence Counsel from 16.12.2022 up to 11.07.2025.

As already noted in the order dated 11.07.2025, this



court is of the view that the said submission is being made just to delay the proceedings of this case without any basis. The present case pertains to the year 2010 and is more than 14 year old. In view of the aforesaid facts and circumstances, this court is not inclined to recall PW-1 Dr.B.K. Gupta at such a belated stage. Hence, the application in hand is hereby dismissed.

Further, perusal of record reveals that sufficient effective opportunities have already been granted to the accused/counsel to address final arguments but the same has not been done till date, therefore, the opportunity of the accused/counsel to address final arguments is hereby closed.

Be put up for final arguments on behalf of the State on 25.07.2025. However, accused/Counsel are at liberty to file written submissions by NDOH.”

8. Sum and substance of the two impugned orders is that the Trial Court declined the petitioner’s request under Section 311 Cr.P.C. to recall PW-1 Dr. B.K. Gupta for cross-examination, stating that on 25.02.2015, PW-1 and PW-2 were discharged without cross-examination after an adjournment request by a proxy counsel was denied. Subsequently, an application under Section 311 Cr.P.C. was allowed on 23.03.2015, which erroneously named only PW-2 Dr. Mohit Gupta. He was subsequently recalled and cross-examined. PW-1 Dr. B.K. Gupta remained unexamined due to the clerical error. This oversight was not corrected at any point, despite ample opportunities, including during the cross-examination of PW-2 in July 2015. The issue was raised only in July 2025, over a decade later, during final arguments. The Trial Court held that no justifiable reason was given for this delay and treated the application as an abuse of process aimed at delaying trial.

9. At this stage, it may be noted the two applications (both under section



311, *ibid*) have not been appended with the instant petition but from the two impugned orders it appears that both were somewhat similar worded based on similar grounds.

10. Having given my thought to the matter, I am of the view that the Trial Court rightly found no sufficient cause for the delay or the omission to reject both the applications to recall PW-1 at the very last stage of trial i.e. final arguments. The conduct of the petitioner reflected a lack of diligence and appeared to be rather a tactic to protract proceedings in a 14-year-old case. There is lack of any specific explanation of how the absence of cross-examination of PW-1 prejudiced the defence or was essential to a fair trial. While the right to fair trial is fundamental, it does not entitle the accused to indefinite opportunities or to reopen settled stages of trial years later. Let us see how.

10.1. Before proceeding further, once again briefly adverting to the impugned orders one by one.

10.2. While dismissing the first application under section 311 of the Cr.P.C., in the impugned Order dated 11.07.2025 the learned Metropolitan Magistrate (MM) *inter alia* noted that when the matter was listed for final arguments, at that stage an application under Section 311 Cr.P.C. was on behalf of accused. Earlier also such similar application was allowed on 23.03.2015 seeking to recall of the witness in question, but due to a clerical error, the name 'Dr. Mohit Gupta' was mistakenly mentioned instead, though otherwise it was correctly identified that PW-1 (who is actually Dr. B.K. Gupta) be summoned. The learned trial court, however, observed that the record reflected otherwise. Order dated 25.02.2015 passed by the trial



court would show that both Dr. B.K. Gupta (PW-1) and Dr. Mohit Gupta (PW-2) were present but were discharged with 'Nil opportunity given' as instead of doing the needful an adjournment was sought by a proxy counsel. The subsequent application filed on 09.03.2015 since specifically sought recall of 'PW-1 Dr. Mohit Gupta' and was allowed on 23.03.2015. PW-2, Dr. Mohit Gupta, was thereafter recalled and cross-examined on 08.07.2015. Trial court further observed that at no point during or after that, did the defence raise any issue or clarification that it was PW-1 Dr. B.K. Gupta who was intended to be recalled. It was in these premise that learned ACJM observed that over ten years have elapsed, and the case, pending since 2010, is at the stage of final arguments and the application at this late-stage appears to be a tactic to delay proceedings without any credible basis.

10.3. Yet again second application was preferred by the petitioner invoking section 311 of the Cr.P.C. which too was dismissed by the Trial court vide an order dated 18.07.2025 wherein, it is *inter alia* noted that the petitioner herein believed both witnesses had been recalled vide order dated 23.03.2015. Though subsequently, PW-2 was cross-examined on 08.07.2015, but Dr. B.K. Gupta remained unexamined as he was not present on that hearing. The error was reportedly discovered only on 11.07.2025 during preparations for final arguments. It was thus that the trial court again observed that that this issue was already raised and decided in the order dated 11.07.2025, where the same facts were considered. No new material was presented. The prosecution's evidence was closed on 16.12.2022, sufficient opportunities to address final arguments were provided and not availed, the defence's opportunity to argue orally was closed with liberty to



file written submissions. Accordingly, the matter being already over 14 years ago, the second application was also dismissed.

11. It is thus clearly borne out that despite the defence being present during the cross-examination of PW-2 and fully aware of court records, no steps were taken to bring the error to the Court's attention. The issue surfaced only in July 2025—more than ten years later—at the stage of final arguments, how one does not know. In the premise, a delay of over ten years in raising a critical procedural lapse cannot be condoned in the absence of any valid or convincing explanation. The petitioner had multiple opportunities during the intervening years, including during cross-examination of PW-2 (08.07.2015), closure of prosecution evidence (16.12.2022), recording of statement under Section 313 Cr.P.C. (14.02.2023), and closure of defence evidence (23.11.2024), yet no corrective action was taken. The plea that the omission came to light only during preparation for final arguments (11.07.2025) defies logic and does not inspire confidence. It may not be out of place to observe that the possibility of the petitioner trying to influence or win the witness who was consciously dropped in 2015 cannot be ruled out over the past 10 years. Having failed in doing so, he may now trying take advantage of the fading human memory over the decade gone past. It was in this context, with a purpose, he deliberately acquiesced to not cross examine the PW-1. Now as, volt face, two applications, one after the other, were filed after 10 years.

12. The defence counsel's silence at the time of recall and cross-examination of PW-2 in 2015 reflects acquiescence to the proceedings. Even assuming a typographical error occurred, the failure to immediately seek



correction indicates a lack of due diligence. Parties ought to act with vigilance; procedural errors must be addressed promptly, especially in a criminal trial.

13. Be that as it may, star witness i.e. the complainant/informer PW-2 Dr. Mohit Gupta who is son of PW-1 Dr. B.K. Gupta has been cross examined. There is nothing on record to suggest as to what specific material evidence or contradiction is likely to emerge from cross-examining his father Dr. B.K. Gupta PW-1 that would impact the defence. Mere assertion that the witness is important does not justify reopening proceedings unless the evidence is shown to be necessary for a just decision. The application is entirely silent on how the absence of PW-1's cross-examination has prejudiced the petitioner or affected the fairness of trial so far. The matter is from the year 2010 and is already more than 14 years old. Prosecution evidence is closed, defence evidence is over, and the case is at the final argument stage. Reopening the trial at the final argument stage, on grounds that could and should have been raised a decade earlier, is suggestive of a deliberate attempt to delay the proceedings. Allowing such a recall would set a dangerous precedent, encouraging litigants to re-open concluded phases of trial on flimsy grounds. It thus appears that accused/petitioner himself, at one stage, considered PW-2 as not a material witness but later changes his mind. Such recourse to approbate reprobate in the same breath is not permissible in law.

14. While Section 311 gives wide discretion to the court to summon or recall any witness if required for a just decision, such discretion is not absolute and must be exercised judicially. What the trial court ought to



consider is two-fold test viz. (i) reasons for non-examination or recalling earlier and (ii) potential prejudice to the opposite party or delay in proceedings. When tested on these touchstones, both factors weigh against the petitioner.

15. Thus, the Trial Court rightly exercised its discretion in rejecting the belated request to recall PW-1 Dr. B.K. Gupta. The petitioner's conduct displays lack of diligence, unexplained inaction, and apparent strategy to delay. No fresh facts, specific prejudice, or substantial cause has been shown to justify revisiting this aspect of the trial. In any case, permitting recall now would neither defeat the ends of justice nor prejudice the accuse/petitioner, in any manner, for the reasons already recorded in the preceding part nor any useful purpose has been otherwise shown by the petitioner.

16. In the parting, I may hasten to add here that order dated 23.03.2015 passed by the trial court to recall the witness on an earlier application filed by the petitioner was, infact, never challenged and has attained finality, and on that count also cannot be reviewed or assailed at this stage under the garb of invoking discretionary power under section 348 of BNSS (311 of Cr.P.C.) at this stage. Second and third applications filed subsequently under section 311, (supra) were, therefore, not maintainable, in light thereof. The intent and purpose of said section is not to abuse the discretion of the court either by the accused or by the prosecution, but to ensure ends of substantive justice is not defeated. To the extent, the judgement cited by the learned counsel for the petitioner, as noted in his arguments, there is no quibble about the principle of law that the court should ordinarily use its discretion liberally, and if at all, it should err, it would rather be in favour of accused



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and not prosecution. However, present is not a case to exercise such a discretion. None of the judgments cited by petitioner are thus applicable in the facts of circumstances herein.

17. In view of the above, no grounds are made out for interference at this belated stage, and both the applications filed by the petitioner deserve outright rejection.

18. The petition is dismissed.

ARUN MONGA, J

JULY 25, 2025

ps