



2026:AHC:125388

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 20636 of 2026

Dilawar Singh

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Sumit Shukla, Suresh Chandra Shukla
Counsel for Opposite Party(s) : G.A.

AFR

Court No. - 35

HON'BLE JAI KRISHNA UPADHYAY, J.

1. This Application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred by the Applicant/Complainant- **Dilawar**, being aggrieved by the order dated **07.04.2026** passed by the learned Sessions Judge, Baghpat in Criminal Revision No. 17 of 2026. By the said Revisional Order, the Revisional Court below dismissed the applicant's criminal revision, thereby affirming the order dated **20.12.2025** passed by the Court of Judicial Magistrate First Class, Baghpat in Complaint Case No. 11414 of 2021(Dilawar Singh v. Waheed and Others).

2. The Trial Court, vide its order dated **20.12.2025**, had rejected the Applicant's application dated **01.12.2025**, filed under Section 311 Cr.P.C., which was filed with prayer to summon and examine witnesses under Section 244 Cr.P.C. long after the pre-charge stage had been closed and formal charges had already been framed.

3. To properly appreciate the legal matrix in this application, it is pertinent to take a look at the facts of the case, which is as follows:

3.1 The Applicant filed a complaint against Opposite Parties Nos. 2 to 4 under Sections 406, 504, and 506 of the Indian Penal Code , alleging criminal breach of trust, intentional insult, and criminal intimidation.

3.2 On 21.10.2013, the statement of the Complainant Dilawar

Singh was recorded under Section 200 Cr.P.C. Subsequently the statements of witness Shivkumar (S/o Ram Singh) and witness Ghanshyam (S/o Jayaprakash) were duly recorded under Section 202 Cr.P.C.. Finding a *prima facie* case, the learned Trial Magistrate summoned opposite parties to face trial under Sections 406, 504, and 506 IPC vide order dated 20.01.2014. Following this the matter was listed for the recording of evidence under Section 244 Cr.P.C. on 10.10.2018. On 10.01.2020, the Complainant's primary statement under Section 244 Cr.P.C. was recorded. Due to the global COVID-19 pandemic and the resultant lockdowns, the examination of further witnesses could not take place.

3.3 On 04.01.2021, the learned counsel representing the Complainant made a voluntary, specific written endorsement, stating explicitly that "the Complainant does not wish to adduce any further evidence under Section 244 Cr.P.C.". The case proceeded further and the discharge application moved by the accused persons was rejected by the Court on 21.12.2021. A formal statutory charges were framed and trial began.

3.4 The Complainant then moved an application under Section 311 Cr.P.C. dated 01.12.2025, claiming that witnesses examined in 2013 under Section 202 Cr.P.C. (Shivkumar and Ghanshyam) had never been presented or examined under Section 244 and this omission was entirely due to the negligence of his former counsel.

3.5 This application of the complainant was rejected by the learned Trial Court vide its order dated **20.12.2025** and then this order of rejection of application of the complainant was affirmed by the learned Revisional Court vide order dated **07.04.2026**. Being aggrieved by these orders complainant has filed instant application.

4. Heard Sri S.C. Shukla, learned counsel for the applicant and Sri Vishwa Deepak Mishra, Learned AGA-I for the State.

5. The learned counsel for the applicant contended that the applicant has no personal knowledge of strict legal procedures and relied entirely upon his counsel in good faith and he acted with gross negligence. The counsel

highlighted that the two witnesses, Shivkumar and Ghanshyam, are not strangers or new additions to the case, as they had already given reliable statements under Section 202 Cr.P.C. in 2013, which formed the very basis on which the Trial Court originally found a case and summoned the accused persons. Finally, the counsel argued that the provisions of Section 311 Cr.P.C. are specifically designed to meet the ends of justice, and failing to allow these key witnesses to depose would not serve justice in the instant matter.

6. *Per Contra*, the Learned AGA strongly opposed the application, arguing that the request under Section 311 Cr.P.C. is an entirely afterthought and a tactic aimed solely at causing a blockade in the trial, which directly violates the explicit mandate of this Hon'ble High Court's **order dated 30.05.2022** directing the expedited disposal of the case within six months. It was submitted that the applicant's counsel had been regularly attending court and had made a conscious, deliberate written endorsement on the margin of the order sheet on 04.01.2021 stating that no further evidence under Section 244 Cr.P.C. was to be given, based upon which the court legally and properly framed charges on 04.03.2022. The learned AGA stressed that the criminal trial has advanced into the post-charge framing stage under Section 246 Cr.P.C., and the statutory framework does not permit a complainant to move backward to record pre-charge evidence once formal charges exist on record, as only those witnesses who were examined under Section 244 Cr.P.C. can legally be subjected to cross-examination at this juncture.

7. I have heard the rival submissions advanced by the parties and perused the material available on the record.

8. It is necessary to first evaluate the statutory mechanism outlined in **Chapter XIX (Part B) of the Cr.P.C.**, which regulates trials of warrant cases instituted otherwise than on a police report. The process moves along a mandatory step-by-step procedure:

“ Section 244 Cr.P.C. (Evidence for Prosecution): [1] When, in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

[2] The Magistrate may, on the application of the prosecution, issue a summons to

any of its witnesses directing him to attend or to produce any document or other thing.

Section 245 Cr.P.C. (Discharge): [1] If, upon taking all the evidence referred to in section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

[2] Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 246 Cr.P.C. (Procedure where accused is not discharged): [1] If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

[2] The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

[3] If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

[4] If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under Sub-Section (3) he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken.

[5] If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

[6] The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged.”

9. The procedure provided in these provision act as a strict legal condition. Only those witnesses who were duly subjected to examination-in-chief under Section 244 Cr.P.C. before the framing of charges can be recalled for cross-examination under Section 246 Cr.P.C. A witness whose statement was only recorded at the pre-summoning stage under Section 202 Cr.P.C. does not automatically become substantive trial evidence. If the complainant fails to examine them under Section 244, they cannot directly cross-examine them under Section 246.

10. In order to prevent the miscarriage of justice due to mistakes or other errors, Section 311 of C.r.P.C. plays a important role with the object that the best available evidence must be brought before the court . Section 311

of the Cr.P.C. confers broad discretionary power upon any Court at any stage of an inquiry, trial, or other proceeding to summon any person as a witness, or examine any person in attendance, or recall and re-examine any person already examined. In order to appreciate the stand of the applicant it will be worthwhile to refer to Section 311 CrPC. The same is extracted hereunder:

“Section 311, Code of Criminal Procedure

‘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.’”

11. A conspicuous reading of Section 311 CrPC 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 prefix to ‘court’, ‘inquiry’, ‘trial’, ‘other proceeding’, ‘person as a witness’, ‘person in attendance though not summoned as a witness’, and ‘person already examined’.

12. However, this expansive power is bounded by settled judicial constraints. The provision cannot be deployed by a party to systematically undo an explicit waiver, fill gaps in their case, or alter the statutory structure of the trial to the grave prejudice of the opposite party.

13. In the case of ***State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402*** paragraph no. 11, Apex Court reiterated that;

“11. It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The accused is entitled to be represented by a counsel of his choice, to be provided all relevant documents, to cross-examine the prosecution witnesses and to lead evidence in his defence. The object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The power available with the court to prevent injustice has to be exercised only if the court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situations when such power can be exercised. The legislature in its wisdom has left the power undefined. Thus, the scope of the power has to be considered

from case to case. The guidance for the purpose is available in several decisions relied upon by the parties. It will be sufficient to refer to only some of the decisions for the principles laid down which are relevant for this case.”

14. In the case of *Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328* in paragraph nos. 10 and 12, Hon’ble Supreme Court stated that:

“10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

15. In the case of *Natasha Singh v. CBI, (2013) 5 SCC 741* in paragraph nos.8 and 10 , Hon’ble Supreme Court stated that:

“8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

*10. In *Mohanlal Shamji Soni v. Union of India* [*Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595 : AIR 1991 SC 1346*] this Court examined the scope of Section 311 CrPC, and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done.”*

16. In the case of *Rajaram Prasad Yadav vs. State of Bihar, (2013) 14 SCC 461* Hon’ble Apex Court held that:

*15.5. In *Iddar v. Aabida* [(2007) 11 SCC 211 : (2008) 1 SCC (Cri) 22 : AIR*

2007 SC 3029] , the object underlying under Section 311 CrPC, has been stated as under in para 9: (SCC pp. 213-14)

“9. ... ‘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 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 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.

17. Recently in the case of **Mayankkumar Natwarlal Kankana Patel v. State of Gujarat, 2025 INSC 1475** Hon’ble Supreme Court observed that the application under Section 311 CrPC was filed after examination of 21 prosecution witnesses and at an advanced stage of trial. Hon’ble Court held that though the power under Section 311 is wide, it is to be exercised sparingly and only when the evidence sought is indispensable for arriving at the truth.

18. So far as the contention of learned counsel for the applicant as to the fact that this omission on the part of applicant was result of negligence of his earlier counsel and he himself has no knowledge of the strict legal procedure, is concerned , this court refers to paragraph no. 22 and 36 in case of **State (NCT of Delhi) (supra)**, which is as under:

“22. We may now refer to the orders passed by the trial court dated 18-2-2015 and the High Court dated 4-3-2015 [Shiv Kumar Yadav v. State, 2015 SCC OnLine Del 7734 : (2015) 219 DLT 76] . Referring to the ground of the earlier counsel not being competent, the trial court observed that the counsel was of the choice of the accused. The accused was not facing a criminal trial for the first time. The cross-examination of the witnesses was deferred time and again to enable the counsel to seek instructions from the accused. The cross-examination of the prosecutrix was deferred on 15-1-2015 to enable the counsel to have legal interview with the accused. After part of cross-examination on 16-1-2015, further cross-examination was concluded on 17-1-2015. The cross-examination of PW 13 was deferred on the request of the accused. Similarly, cross-examination of PWs 22, 26 and 27 was deferred on the request of the defence counsel. After referring to the record, the trial court observed as under:

“22. The aforesaid proceedings clearly bely the claim of the accused/applicant that the case has been proceeding at a ‘hurried pace’ or that he was not duly represented by a defence counsel of his choice. The claim of the applicant that he was unwilling to continue with his earlier counsel is also nothing but a bundle of lie inasmuch as the accused never submitted before the court that he wants to change his counsel. Rather, it is revealed from the record that the earlier counsel, Shri Alok Kumar was acting as per his instructions and having legal interview with him. The accused cannot be permitted to take advantage of his submissions made on the first date i.e. 13-1-2015 that he wants to engage a new counsel as his subsequent conduct does not support this submission. I may also add that before proceeding with the case further, I had personally asked the accused in the open court whether he wants to continue with his counsel and only on getting a reply in the affirmative, were the proceedings continued further. It thus appears that the endeavour of the accused by filing this application is only to delay the proceedings despite the fact that all along the trial his request for adjournment have been duly considered and allowed and he has been duly represented by a private counsel of his choice.

23. I am also unable to accept the plea of the accused that the counsel representing him earlier was incompetent, being a novice and that he is entitled to recall all the prosecution witnesses now that he has engaged a new counsel. Although, Shri Alok Kumar Dubey and Shri Ankit Bhatia, both have enrolment number of 2014 as per the power of attorney executed by the accused in their favour, however, to my mind the competence of a lawyer is subjective and the date of his enrolment with the Bar Council can certainly not be said to be a yardstick to measure his competence.

24. Moreover, the competence of the new counsel may again be questioned by another counsel, who the accused may choose to engage in future.

36. The application under consideration is thus nothing but an attempt to protract the trial and in fact seek an entire retrial. There is no change in circumstances except change of counsel, which, to my mind, is no ground to allow the application. Interestingly, in Para 17 of the application, it has been contended that the present counsel is not aware of the scheme and design of defence of the previous counsel and is thus at a loss and disadvantageous position to defend the accused and for conducting the case as per his acumen and legal expertise, the recalling of PWs are necessary. It may be noted that the defence of an undertrial is not expected to vary from counsel to counsel and irrespective of change of the counsel, an undertrial is expected to have a single and true line of defence which cannot change every time he changes a counsel. Nor can a new counsel defend the case of such an undertrial as per the new scheme and design in accordance with his acumen and legal expertise.”

Therefore, this court do not find merit in this contention of counsel for the applicant.

19. In the instant case, the record shows that on 04.01.2021, the

Applicant's previous counsel consciously made a written endorsement closing the pre-charge evidence under Section 244 Cr.P.C. This was a deliberate and formal legal step that allowed the Trial Court to evaluate whether the accused-persons should be discharged or charged. The Complainant did not raise any objection, file an affidavit of protest, or challenge the subsequent framing of charges on 04.03.2022.

20. It was only in late 2025, nearly four years after charges were framed and after an explicit order from this High Court on 30.05.2022 demanding a expeditious conclusion to the trial that the Complainant sought to reopen the Section 244 stage through a new counsel. If this Court were to permit a party to erase years of formal trial steps simply by hiring a new lawyer and claiming "my previous lawyer didn't inform me," the entire structure of the criminal justice system would collapse into endless delays.

21. Allowing the Complainant to introduce new witnesses at the Section 246 stage when they were never subjected to examination-in-chief under Section 244 would heavily prejudice the statutory rights of the accused and fundamentally disrupt the trial process.

22. After a careful review of the facts of the present case and applying these legal standards to the present case, this Court finds that the orders passed by both the learned Magistrate Court on **20.12.2025** and the learned Sessions Court on **07.04.2026** are well-reasoned, legally sound, and completely free from any perversity. There exist no patent illegality, abuse of process, or jurisdictional error in the impugned orders. The concurrent findings of the learned Courts are legally sound and require no interference.

23. Accordingly, the present Application under Section 528 BNSS is hereby, **Dismissed**.

(Jai Krishna Upadhyay,J.)

June 4, 2026

S.K.S.