



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR



S.B. Criminal Misc(Pet.) No. 1501/2026

- 1. Narayan Lal Rebari S/o Shri Thana Ji Rebari, Aged About 42 Years, Resident Of Jagat, Kurabad, District Udaipur, Rajasthan.
- 2. Dulhe Singh S/o Shri Padam Singh, Aged About 45 Years, Resident Of Vasu, Kurabad, District Udaipur, Rajasthan.
- 3. Devi Singh S/o Shri Nathu, Aged About 39 Years, Residentadwas, Jawar Mines, District Udaipur, Rajasthan.

-----Petitioners

Versus

State Of Rajasthan, Through The Public Prosecutor.

-----Respondent

For Petitioner(s) : Mr. Hardik Vyas
For Respondent(s) : Mr. Ramesh Dewasi, PP

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Judgment

- 1. Date of conclusion of arguments: 06.03.2026
- 2. Date on which judgment was reserved: 06.03.2026
- 3. Whether the full judgment or only the operative part is pronounced: Full
- 4. Date of pronouncement: 01.04.2026

1. The present criminal misc. petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (old Section 482 of Cr.P.C.) seeking quashing of the order dated





15.01.2026 passed by the learned District & Sessions Judge, Salumber in Session Case No. 24/2025 (CIS No. 10/2022) titled as State of Rajasthan vs. Narayanlal & Ors., whereby the application preferred by the petitioners, who are accused in the trial, under Section 311 of Cr.P.C. (now Section 348 of BNSS) for summoning and examining the material witness Dr. Sanjay Shah has been rejected.

2. Learned counsel for the petitioners submits that the complainant Bhagwati Lal Suthar lodged an FIR No.243/2020 dated 10.09.2020 alleging commission of offence under Sections 279, 336, 384, 307 and 323 Indian Penal Code, 1860. It is alleged that on 09.09.2020 a collision took place between the vehicle of the complainant with another vehicle bearing registration No. RJ-27-CE-2447, whereafter an altercation ensued and the complainant along with one Vinod Kumar Jain sustained injuries.

3. During investigation, injury reports of the injured persons were prepared and medical opinion regarding the nature of injuries was obtained and after completion of investigation, the police has submitted a charge-sheet against the petitioners for offences under Sections 279, 323, 308, 325, 365, 387 and 34 IPC.

4. The prosecution has cited 21 witnesses in support of its case and the trial has progressed substantially. Out of the said witnesses, PW-1 to PW-18 have already been examined and only the last prosecution witness, namely the Investigating Officer, Hanwant Singh Sodha, remains to be examined.

5. During the course of trial, the first Investigating Officer Kishor Singh (PW-16) admitted in his cross-examination that the



Medical Report (Ex.D-1) was prepared on the basis of request letter (Ex.P-23) sent by him to the concerned doctor. He further submits that the opinion regarding injuries as per (Ex.15) and (Ex.D-2) can only be given by the doctor. `

6. Learned counsel for the petitioner submits that the aforesaid medical report and opinion were prepared by Dr. Sanjay Shah, who had medically examined the injured, Vinod Kumar Jain. However, the said doctor was neither cited as a prosecution witness nor examined during trial.

7. Consequently, the petitioners moved an application dated 08.12.2025 under Section 311 Cr.P.C. seeking summoning of Dr. Sanjay Shah as a witness. It was alleged that in the report of the Doctor, it has been stated that the death of the deceased was caused by a stroke and not by way of any assault. There was no injury on the vital part of the deceased and hence no offence under Section 308 IPC was made out. It was submitted that the Investigating Officer in his statement has stated that opinion regarding the injury on the basis of medical reports can only be given by the doctor.

8. It is contended on behalf of counsel for the petitioner that the evidence of the said doctor is essential for proper appreciation of the medical evidence and for arriving at a just decision of the case. It is further submitted that denial of opportunity to summon such a material witness would seriously prejudice case of the accused/petitioner. However, the learned trial court rejected the application vide order dated 15.01.2026 mainly on the ground that



it is the prerogative of the prosecution to decide which witnesses are to be examined.

9. It is vehemently argued by learned counsel for the petitioner that the said reasoning is contrary to the settled principles governing the exercise of powers under Section 311 Cr.P.C. In order to buttress his submissions, reliance is placed upon the judgments passed by the Hon'ble Supreme Court in the case of **Rajaram Prasad Yadav vs. State of Bihar, (2013) 14 SCC 461; Varsha Garg vs. State of Madhya Pradesh & Ors., 2022 SCC OnLine SC 986; and K.P. Tamilmaran v. State, 2025 SCC OnLine SC 958**, to contend that the powers under Section 311 Cr.P.C., are of wide amplitude and that the Court is duty-bound to summon or recall a witness if his evidence appears to be essential for arriving at a just decision of the case.

10. Per contra, the learned Public Prosecutor opposed the instant petition and supported the impugned order.

11. I have considered the submissions made at the Bar and have perused the material available on record.

12. Before adverting to the merits of the case, it would be apposite for this Court to reproduce the relevant statutory provision, as under:-

"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."





13. A plain reading of the aforesaid provision makes it abundantly clear that very wide powers have been conferred upon the Court to summon any person as a witness, or to recall and re-examine any witness already examined. The second part of the Section in fact mandates the summoning of a witness by the court if the court is of the opinion that such evidence is essential for the just decision of the case.

14. The Hon'ble Supreme Court in the case of **Rajaram Prasad Yadav (supra)** has categorically laid down the principles/guidelines for exercising the powers under Section 311 CrPC by the Courts. The principles laid down are as under :-

"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 Court to summon and examine or recall and reexamine 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. Similarly, in the case of **Varsha Garg (supra)**, the Hon'ble Supreme Court has held that the criminal court possesses ample power to summon or recall witnesses even after closure of





evidence if such evidence appears essential for the just decision of the case. The Apex Court observed as under :-

"31. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine Section 311 of CrPC. Section 311 provides that the court "may" :

- (i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and
- (ii) Recall and re-examine any person who has already been examined.

This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the court "shall" summon and examine or recall and re-examine any such person "if his evidence appears to the court to be essential to the just decision of the case". Section 311 contains a power upon the court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

32. The first part of the statutory provision which uses the expression "may" postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the court as it uses the expression "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". Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the court. The first part of the statutory provision is discretionary while the latter part is obligatory.

35. Summing up the position as it obtained from various decisions of this d Court, namely, Rameshwar Dayal v. State of U.P.¹⁵, State of W.B. v. Tulsidas Mundhrals, Jamatraj Kewalji Govani v. State of Maharashtra, Masalti v. State of U.P.¹⁸, Rajeswar Prasad Misra v. State of W.B.¹⁹ and Ratilal Bhanji Mithani v. State of Maharashtra ²⁰, the Court held: (Mohanlal Shamji Soni case¹³, SCC p. 283, para 27)

"27. The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair





play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of the case.

36. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasize that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realisation of justice is manifest."

16. Recently, the Hon'ble Supreme Court in the case of **K.P. Tamilmaran (supra)** has reiterated that the power under Section 311 Cr.P.C. is couched in the widest terms and may be exercised at any stage of the trial so that the Court is not deprived of valuable evidence necessary for the just adjudication of the case.

The Hon'ble Apex court observes as under :-

"48. As is clear from the language of the provision itself, there is a wide discretion with the Courts under Section 311 CrPC. These powers can be exercised suo moto or on an application moved by either side. After all, the object is that the Court must not be deprived of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination. This power under Section 311 CrPC can be invoked at any stage of the trial, even after the closing of the evidence. Section 311 CrPC can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 of CrPC. As discussed above, powers under Section 311 CrPC can either be exercised on an application moved by either side to the case or suo moto by the Court. In case a person is not listed as a witness in the charge-sheet but later, the prosecution desires to bring that person as an additional prosecution





witness, then the prosecution can move an application to bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc. would follow as per the procedure. On the other hand, when the Court calls a person as a Court witness, there are some restrictions regarding the cross-examination of such witness.

49. In a case where neither party is interested in examining a person as a witness yet the Court feels that the evidence of such a person is necessary for a just decision, the Court though cannot compel either the prosecution or the defence to call a witness, but it can invoke its power under Section 311 CrPC, read with Section 165 of the Evidence Act and call such a person as a Court witness. Whether person is required to be examined as a witness for a just decision again a question which has to be decided by the Court on the basis the facts of that particular case. (See: Rama Paswan v. State Jharkhand, (2007) 11 SCC 191)”

17. Considering the facts and circumstances of the present case in light of the law laid down by the Hon'ble Apex Court, it is found that the Investigating Officer, in his statements, has clearly stated that he has sent the requisition (Ex.P/25) to the Doctor and reply was received, which is (Ex.D/1). Further, it is stated that the documents (Ex.D/2) were also received by him, however, the opinion regarding the injuries as per (Ex.P/15) and (Ex.D/2) cannot be given by him and only Doctor can give the opinion. These documents have been prepared by Dr. Sanjay Shah during treatment. These documents are also on record and were received by the Investigating Officer during investigation and have also



been relied upon, but however, surprisingly the Doctor, who has prepared the documents, has not been produced as a witness.

18. The accused-petitioners have clearly disputed the alleged injuries on the person of the deceased and contend that the reports do not establish that the stated injuries were the cause of death. Further, the Investigating Officer (PW-16), in his cross-examination, has categorically stated that an opinion on these reports can only be given by the doctor concerned.

19. Therefore, the cause and nature of the injuries constitute a crucial aspect of the trial, and the examination of the doctor who prepared the medical report is undoubtedly essential to assist the Court in appreciating the evidence in its proper perspective and in arriving at a just decision of the case.

20. Merely because the prosecution did not cite the said doctor as a witness cannot be a ground to deny the petitioners the opportunity to summon such a material expert witness, when his evidence appears to be relevant and necessary for the just decision of the case.

21. Therefore, the reasoning assigned by the learned trial court that it is solely the prerogative of the prosecution to decide which witnesses are to be examined, overlooks the true scope and object of Section 311 Cr.P.C., which empowers the Court itself to summon any witness if his evidence appears necessary for the just adjudication of the case.



22. In view of the foregoing discussion, this Court is of the considered opinion that the examination of Dr. Sanjay Shah is essential for the just and proper adjudication of the case and would advance the cause of justice, and the impugned order dated 15.01.2026 passed by the learned District & Sessions Judge, Salumber cannot be sustained.

23. Accordingly, the present criminal miscellaneous petition is allowed and the order dated 15.01.2026 passed by the learned District & Sessions Judge, Salumber in Session Case No.24/2025 (CIS No.10/2022) is hereby quashed and set aside. The application filed by the petitioners under Section 311 Cr.P.C./Section 348 BNSS is allowed.

24. The learned trial court shall summon Dr. Sanjay Shah as a witness and permit the parties to examine and cross-examine him in accordance with law, and thereafter proceed with the trial expeditiously.

(BALJINDER SINGH SANDHU),J

80-Sanjay/-

