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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH**

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**CRM-M-32222-2026 (O&M)**  
**Date of decision: 03.07.2026**

**Deepak Kumar @ Kartik Giri**

**...Petitioner**

**Versus**

**State of Punjab**

**...Respondent**

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Pardhuman Garg, Advocate  
for the petitioner.

Ms. Ruchika Sabherwal, Senior DAG, Punjab.

**MANISHA BATRA, J. (Oral)**

1. Prayer in this petition, filed under Section 528 of BNSS, 2023, is for quashing of order dated 20.05.2026 (Annexure P-4), passed by the Court of learned Judge, Special Court, Ludhiana in case arising out of FIR No. 293 dated 27.11.2018, registered under Section 20 of the NDPS Act, 1985 and Sections 181, 190(2), 192 and 196 of the Motor Vehicle Act at Police Station Samrala, whereby an application filed by the petitioner under Section 348 of BNSS (*corresponding to Section 311 of Cr.P.C.*), for summoning and cross-examining Rajni Rohilla, Scientific Officer, Regional Testing Forensic Science Laboratory, Ludhiana, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered with the allegations that the petitioner was apprehended during a naka checking and was allegedly found in possession of two kilograms of charas concealed around his

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waist. The recovered substance was sent for chemical examination and the prosecution relied upon the FSL report to establish that the contraband recovered from the petitioner was charas.

3. During the course of trial, the petitioner moved an application seeking summoning of Rajni Rohilla, Scientific Officer, Regional Testing FSL, Ludhiana, for the purpose of cross-examining her regarding the correctness and reliability of the FSL report exhibited by the prosecution. The prosecution opposed the application and the learned Special Court dismissed the same vide impugned order dated 20.05.2026, holding that since the Scientific Officer had not been examined by the prosecution as a witness, the question of permitting her cross-examination did not arise. Aggrieved thereby, the petitioner has approached this Court by way of the present petition.

4. Learned counsel for the petitioner has argued that that the impugned order suffers from material illegality and has resulted in denial of a fair opportunity to the defence. It is submitted that the FSL report is the principal piece of evidence relied upon by the prosecution to establish that the recovered substance was charas and, therefore, the author of the report is a material witness whose cross-examination is essential for a just adjudication of the case. It is argued that the petitioner seriously disputes the correctness and reliability of the FSL report. According to the petitioner, the report records the resin extract (THC content) as 20.78%, whereas settled legal position is that where the tetrahydrocannabinol content is around 25%, the substance would fall within the category of ganja and not charas. It is, therefore, contended that cross-examination of the Scientific Officer is indispensable for testing the correctness of the report and for effectively challenging the prosecution case.

5. It is further argued by learned counsel for the petitioner that the

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learned Special Court erred in rejecting the application solely on the ground that the Scientific Officer had not been examined by the prosecution. It is argued that the power under Section 348 BNSS/Section 311 Cr.P.C. is intended to enable the Court to summon any person whose evidence appears essential for a just decision of the case, irrespective of whether such person has already been examined by either party. It is also submitted that no prejudice would be caused to the prosecution if the Scientific Officer is summoned, whereas denial of such opportunity would cause serious prejudice to the defence. Hence, it is urged that the petition deserves to be allowed and the impugned order is liable to be set aside.

6. Learned State counsel, who has advance notice of the petition, has argued that there is no infirmity or illegality in the impugned order and the application was rightly dismissed as the Scientific Officer was never examined as a prosecution witness and, therefore, no occasion arises to permit her cross-examination. Hence, it is urged that the petition is liable to be dismissed.

7. This Court has heard the rival submissions.

8. It is well settled that the power, under Section 348 of BNSS (erstwhile Section 311 of Cr.P.C.) can be exercised by the court ***at any stage of any inquiry, trial or other proceedings under the Code***, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment

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has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 Cr.P.C.

9. In ***Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors 2004 (2) RCR (Crl.) 836***, the Supreme Court described the scope of Section 311 of the Code as under:-

*“Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”*

10. In ***Mannan Sk. and others v. State of West Bengal and another 2014 (13) SCC 59***, Hon'ble Apex Court had allowed the application filed under Section 311 Cr.P.C. and the witness was recalled and re-examined after 22 years of incident, holding that justice must not be allowed to suffer because of the oversight of the prosecution.

11. A conjoint reading of Section 348 of the BNSS (*corresponding to Section 311 of Cr.P.C.*) and the law laid down by the Hon'ble Supreme Court leaves no manner of doubt that the power vested in the Court is of the widest amplitude and is intended to advance the cause of justice. The determinative test is not whether the witness has been cited or examined by either of the parties but whether the evidence of such witness appears to the Court to be essential for arriving at a just decision of the case. The provision is, thus, aimed at empowering the Court to discover the truth by ensuring that all material

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evidence is brought before it.

12. In the present case, the prosecution seeks to establish that the substance allegedly recovered from the petitioner is charas primarily on the strength of the report of the Regional Testing Forensic Science Laboratory. The author of the said report is, therefore, an expert witness whose opinion constitutes an important piece of evidence in the prosecution case. The petitioner has specifically disputed the correctness and reliability of the opinion expressed in the report and seeks an opportunity to test its veracity by way of cross-examination of the Scientific Officer. Whether the contention sought to be raised by the petitioner ultimately merits acceptance is a matter to be adjudicated by the trial Court upon appreciation of the evidence. However, at this stage, the petitioner cannot be denied an opportunity to challenge the expert opinion, particularly when the same forms a vital link in the prosecution case.

13. The sole reason assigned by the learned Special Court for dismissing the application is that the Scientific Officer had not been examined by the prosecution and, therefore, no occasion arose to permit her cross-examination. This Court is unable to accept the said reasoning. The power under Section 348 of the BNSS is not confined to recalling or re-examining witnesses who have already entered the witness box. The provision also expressly empowers the Court to summon any person as a witness if his or her evidence appears to be essential for the just decision of the case. Therefore, the fact that the Scientific Officer was not examined by the prosecution could not, by itself, furnish a valid ground for declining the prayer made by the petitioner. It is equally significant that permitting the Scientific Officer to be summoned and examined would not cause any prejudice to the prosecution. Rather, such

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course would enable the trial Court to have the benefit of the testimony of the expert whose report is already part of the record and whose opinion is sought to be relied upon by the prosecution. On the other hand, denial of such opportunity would deprive the petitioner of an effective opportunity to test the correctness of the expert evidence and may adversely affect his right to a fair trial.

14. In view of the foregoing discussion, this Court is of the considered opinion that the learned Special Court adopted an unduly restrictive approach while exercising jurisdiction under Section 348 of the BNSS. The impugned order, therefore, cannot be sustained in law. Consequently, the present petition is allowed. The impugned order dated 20.05.2026 (Annexure P-4), passed by the learned Judge, Special Court, Ludhiana, is hereby set aside. The application moved by the petitioner under Section 348 of the BNSS is allowed. The learned trial Court shall summon Rajni Rohilla, Scientific Officer, Regional Testing Forensic Science Laboratory, Ludhiana, as a Court witness, if so required, or otherwise secure her presence in accordance with law and afford the petitioner an effective opportunity to cross-examine her with respect to the FSL report relied upon by the prosecution.

15. It is, however, clarified that this Court has expressed no opinion on the merits of the prosecution case or the correctness of the opinion contained in the FSL report, and the learned trial Court shall proceed to decide the case independently on the basis of the evidence adduced before it, uninfluenced by any observation made herein.

**03.07.2026***Waseem R. Ansari***(MANISHA BATRA)  
JUDGE***Whether speaking/reasoned  
Whether reportable**Yes/No  
Yes/No*