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

**CRM-M-50425-2026 (O&M)
Date of decision: 07.09.2026**

SUBHASH SINGH**...PETITIONER****VERSUS****STATE OF HARYANA****...RESPONDENT****CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL**

Present: Mr. Anshumaan Dalal, Advocate
for petitioner.

SHALINI SINGH NAGPAL J.

1. The petition under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 assails order dated 17.08.2026 of learned Additional Sessions Judge, Jhajjar in FIR No. 534 dated 24.12.2017, under Sections 302 and 34 Indian Penal Code, Police Station Beri, District Jhajjar, Haryana, dismissing petitioner's application under Section 348 Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Learned counsel for the petitioner submits that on completion of investigation in the FIR, report under Section 173 Cr.P.C. was presented against the petitioner and 04 others. Main witnesses i.e. the complainant Ramesh son of Tarif Singh was examined as PW-12 and Rajesh son of Tarif Singh as PW-14. Initially, petitioner engaged Sh. V.S. Rana, Advocate as his counsel, who cross-examined PW-1 to PW-11. However, at the time of cross-examination of PW-12, Sh. V.S. Rana, Advocate was diagnosed with critical illness, on which account, petitioner engaged Sh. Rajesh Yadav, Advocate. Sh. V.S. Rana expired owing to his illness. On 02.07.2019, petitioner moved an application specifically stating that his counsel was not properly pursuing the case and a Legal Aid Counsel be provided to him. The



application was allowed. On 03.09.2019, prosecution witnesses appeared before the Court but their cross-examination could not be conducted and cost of ₹20,000/- was imposed upon the petitioner. Cross-examination of PW-12 and PW-14 was done by Legal Aid Counsel but relevant questions were not put to both witnesses. Petitioner was roped in the case being real brother of co-accused Sanjay. However, petitioner was on inimical terms with Sanjay and there was litigation pending between the two. No questions regarding the said litigation were put to the witnesses. Therefore, PW-12 Ramesh and PW-14 Rajesh were required to be cross-examined again, only on the limited aspect of litigation and quarrels between petitioner and main accused Sanjay, which would destroy any motive for commission of offence of murder. Learned trial Court failed to consider this material aspect of the case and erroneously declined the application under Section 348 BNSS. To support his submissions he relies upon ***Rajendra Prasad Vs. The Narcotic Cell through its Officer-in-Charge, Delhi 1119(3) RCR (Criminal) 440, Zahira Habibullah Sheikh and Another Vs. State of Gujarat and Others 2006(2) RCR (Criminal) 448 and Janeshwar Dutt Versus Sanjiv Kumar 2007(2) RCR (Criminal) 628.***

3. In ***Rajaram Prasad Yadav Vs. State of Bihar and Another (22013) 14 SCC 461***, Hon'ble Supreme Court culled out broad principles defining the scope of Section 311 Cr.P.C. as under:

- i) *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?*
- ii) *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.

ii) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

iv) 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.

v) 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.

vi) The wide discretionary power should be exercised judiciously and not arbitrarily.

vii) 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.

viii) 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.

ix) 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.

x) 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.

xi) 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.

xii) 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.

xiv) 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.”

4. It is manifest that the Section 311 Cr.P.C./348 BNSS confers the widest discretionary power on the Courts to meet the ends of justice. If evidence of a witness appears to the Court to be essential for just decision of the case, the Court can summon, examine, recall and re-examine any witness. However, like any other judicial discretion, the discretion under Section 348 BNSS is to be exercised by the Court on sound judicial principles and not capriciously. The discretion is to be exercised considering exigency of the situation, fair play and good sense. Before invoking power under Section 348 BNSS, the Court is required to satisfy itself that the evidence sought to be led is, in every respect, essential to arrive at a just conclusion. If proper evidence has not been adduced or relevant material is not brought on record, the Court is required to show magnanimity in permitting the mistakes to be rectified. It is equally well settled principle that power under Section 348 BNSS should be invoked by the Court only to meet the ends of justice, for strong and valid reasons and the same must be exercised with care, caution and circumspection. Accused, no doubt, is entitled to fair trial. Concept of fair trial also involves protection of interest of the victim, the society at large. Rights of all stakeholders must be balanced.

5. In ***State of Haryana Vs. Ram Mehar & Others Etc. 2016(4) RCR(Criminal) 154***, Hon'ble Apex Court was dealing with a similar



situation, wherein application for recalling some prosecution witnesses for cross-examination was made on the ground that counsel engaged earlier by the defence did not put certain questions to the witnesses. The High Court allowed the said application, which order was subsequently set aside by the Apex Court holding that the accused had engaged counsel of their choice and in such a situation, recalling of witness indubitably cannot form the foundation. It was further held that it is normally to be presumed that the counsel conducting a case is competent, particularly when a counsel is appointed by choice of a litigant. While holding that the approach must be liberal, a word of caution was added that magnanimous should not mean to convey individual generosity.

6. Statements of PW-12 Ramesh Kumar and PW-14 Rajesh are on record. PW-12 Ramesh son of Tarif was partly examined on 25.02.2019. His cross-examination was deferred, an application under Section 319 Cr.P.C. being moved. On that day, Sh. Rajesh Yadav, Advocate was representing petitioner. The witness was recalled for cross-examination on 24.02.2020 and cross-examination was conducted by Legal Aid Counsel, appointed on request of the petitioner, who was dissatisfied with the performance of his previous counsel. Similarly, PW-14 Rajesh was partly examined on 05.08.2019 and his cross-examination was concluded on 15.02.2021. After 05 years of conclusion of evidence of both witnesses, when the case was near conclusion, the application for recalling the witnesses was moved. The only ground pressed for recall is that questions regarding enmity and litigation between petitioner and co-accused Sanjay were not put to the witnesses. Recalling of witnesses, for the only reason that some relevant questions regarding motive could not be put to them, cannot be permitted

when full, effective and proper opportunity has been afforded for cross-examination. Concept of fair trial extends to the accused and also to the prosecution and the victim. Fair trial cannot be limitlessly stretched in favour of accused and a balance has to be struck between interest of the prosecution, the accused and the victim. Since defence of the case is open, documentary evidence regarding litigation between the petitioner and co-accused Sanjay can well be produced. Recall of witnesses on the ground that the counsel did not put relevant questions cannot be permitted in the peculiar facts and circumstances of the case, as the evidence of motive can still be led. Learned trial Court has aptly noticed that it is possible that the witnesses had been won over and the parties cannot be allowed to pollute the process of justice, in any manner. There is no illegality or perversity in the order passed by learned trial Court, which must be upheld. Ordered accordingly.

- 7. Judgments relied upon by learned counsel for the petitioner were rendered on their own facts, which in no two criminal cases can be identical.
- 8. The petition is dismissed.
- 9. Pending miscellaneous applications, if any, stand disposed of.

07.09.2026
Ajay Goswami

(SHALINI SINGH NAGPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No