



2026:AHC-LKO:46680

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 5373 of 2026

Gulzar Ali

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko. And 2
Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Rahul Kumar Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 16

HON'BLE SHREE PRAKASH SINGH, J.

1. Heard Mr. Rahul Kumar Singh, learned counsel for the applicant, Mr. Nirmal Kumar Pandey and Mr. Sushil Kumar Pandey, learned counsels for the State and perused the record.

2. Notice to opposite party no. 2 is hereby dispensed with.

3. The present application under Section 482 Cr.P.C. has been filed with the following main relief:-

"For the facts, reasons and circumstances mentioned in the accompanying affidavit, it is most respectfully prayed that this Hon'ble court may kindly be pleased to call the witnesses PW1 namely Smt Iddan as well as Kiran Shukla(I.D.) BSA Office and Menu Tiwari(I.D.) BSA Office and set aside the order dated 15.05.2026 passed by Additional and Session Judge, FTC, Unnao."

4. Submission of learned counsel for the applicant is that while passing the impugned order dated 15.05.2026, on an application moved on 23.03.2026, under Section 311 Cr.P.C., the request of the applicant for summoning P.W.1 (mother of the victim), as well as the two experts, before whom the statements of the victim were recorded, under Sections 161 and 164 Cr.P.C., has been rejected, without proper application of

mind.

5. He submits that the victim is mentally challenged and her statements were recorded with the assistance of the experts, namely, Ms. Kiran Shukla and Ms. Meenu Tiwar and the victim has improved upon her earlier version, by alleging that rape had been committed upon her, though such an allegation was not made in the First Information Report, wherein the allegation was only of outraging the modesty, therefore, the summoning/examination of the said experts are very much required for proper adjudication of the matter.

6. Further submission is that the case is at the stage of arguments and even the application, which was moved on 23.03.2026, was decided after two months, i.e., on 15.05.2026, therefore, there is no delay on the part of the applicant.

7. It is argued that without recording the statements of the experts, the trial court would not be able to reach the correct conclusion. He also submits that no sufficient reason has been assigned as to why the statements of the experts, before whom the statement of the mentally challenged victim was recorded, are not relevant for adjudication of the matter.

8. Concluding his arguments, he submits that the case of the applicant is covered with the ratio laid down in case of *Natasha Singh versus Central Bureau of Investigation (State)*, reported in (2013) 5 SCC 741. Thus, submission is that the impugned order may be set aside.

9. On the other hand, learned A.G.A. has opposed the aforesaid submissions and argued that the applicant approached the trial court at the belated stage, as the statement of P.W.1 was recorded on 01.08.2023 and the application under Section 311 Cr.P.C. was filed after about three years. He further submits that since the examination-in-chief of the proposed witnesses has not been conducted, thus, they cannot be permitted to be cross-examined, at this stage.

10. Having heard learned counsel for the parties and after perusal of the records, it emerges that the statement of the mentally challenged victim

was recorded with the assistance of two experts, namely, Ms. Kiran Shukla and Ms. Meenu Tiwari, who, while making her statement under Section 164 Cr.P.C., made certain serious allegations, which were not narrated in the First Information Report. For the first time, the allegation of rape was levelled by the victim, against the applicant, in her statement under Section 164 Cr.P.C. Even the age and other descriptions have also been made with the help of the experts, who assessed the statement of the victim.

11. The fact remains that the prosecution has failed to produce the material witnesses, namely, Ms. Kiran Shukla and Ms. Meenu Tiwari, though the statement of the victim was recorded by the Investigating Officer in their presence and with their assistance.

12. The provision of Section 311 of CrPC provides to summon the material witness and examine the person present. Section 311 of CrPC is quoted here-in-under:

"Section 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 bare reading of the aforesaid provision indicates that 'the trial court may, at any stage of any inquiry, trial or other proceeding, summon any person as a witness'. This shows that before pronouncing the judgment, if the trial court reaches to the conclusion that for proper and just adjudication of the trial, examination of any witness is required, such witness may be summoned. The provision also mandates that such witness may be examined or re-examined, as the case may be.

14. This Court is conscious of the fact that before recording a finding of conviction against an accused, all relevant possibilities bearing upon the

innocence of the accused, are required to be explored. In the present matter, two material witnesses have not been produced by the prosecution. The applicant moved an application in the month of March, 2026 for summoning those witnesses, which came to be decided after two months by the trial court.

15. This Court is also aware that an application under Section 311 Cr.P.C. can be refused to entertain, if it is filed only to cause delay in trial proceedings, but at the same time, the interest of the accused cannot be left to be jeopardize merely on unfounded presumption of delay.

16. Hon'ble Supreme Court, while dealing with the identical issue, has held that age of a case by itself cannot be decisive when a request is made for calling of a material witness for his examination, which is rendered in case of **Manju Devi vs. State of Rajasthan and another, (2019) 6 SCC 203**. Paragraph 12 and 13 of the judgment is referred herein:-

"12. The peculiar facts and circumstances of the case have either been ignored or have been cursorily dealt by the trial court with the observations that the effect of non-availability of the original post-mortem report would be considered at the time of the final disposal of the matter. In fact, the principal reason weighing with the trial court in declining the prayer for examination of the said witness had been that the case was pending since the year 2010. The High Court, on the other hand, chose not to exercise its powers under Section 482 CrPC, with the only observation that the discretion so exercised by the trial court was not to be interfered with.

13. Though it is expected that the trial of a sessions case should proceed with reasonable expedition and pendency of such a matter for about 8-9 years is not desirable but then, the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness."

17. It has been observed by the Hon'ble Apex Court that the pendency of the length and duration of a case cannot come into the way for ensuring

the justice for taking all necessary and material evidence and, therefore, it has been held that while dealing with the situation where a request for calling of a witness for examination is made, the same should not be ignored or dealt with cursorily.

18. In this regard, it is trite that the power vest in terms of Section 311 of CrPC, to the Court, to summon and examine or recall and re-examine any material witness at any point of time/stage, could not be curtailed merely because of any delay in filing the application for recall of such material witness as the uses of the words in Section 311 such as "any court", "at any stage", or "any inquiry or trial or other proceeding", "any person", and "any such person" apparently discernible that the provision itself expresses the widest possible term and there is no limit of the discretion of court in any way.

19. I have also considered that the trial court, while passing the impugned order, has failed to record any finding regarding the irrelevance of the witnesses, namely, Ms. Kiran Shukla and Ms. Meenu Tiwari. The only finding recorded is that since the examination-in-chief has not been conducted, therefore cross-examination cannot be permitted. Such a finding is erroneous and groundless as, if the trial court reaches to the conclusion that the examination of a witness is necessary, such witness can be summoned at any stage, prior to the pronouncement of the judgment. Therefore, there can be no legal bar of summoning the witnesses only because their examination-in-chief has not yet been conducted.

20. I am also aware of the law rendered by the Apex Court in the case of **Natasha Singh (supra)**. Paragraph 15 of the above-noted judgment is extracted as under:

"15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the

prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC 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 great caution and circumspection. The very use of words such as 'any court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

21. The Hon'ble Supreme Court has categorically held that for discovering the relevant facts and obtaining proper proof so as to arrive at a just decision, the power under Section 311 Cr.P.C. must be exercised judicially and not capriciously.

22. It is long settled law that examination of a witness cannot be refused merely on the ground that the evidence of such witness may not be conclusive, if the evidence is otherwise relevant. In the present case, this Court is of the considered opinion that the statements of the experts, with whose assistance, the statement of the mentally challenged victim was recorded under Section 164 Cr.P.C., constitute relevant evidence, particularly in view of the fact that the victim introduced the allegation of rape for the first time, in her statement, under Section 164 Cr.P.C.

23. In view of the aforementioned submissions and discussions above, this Court finds merit in this present application. Consequently, the impugned order dated 15.05.2026 is hereby set aside.

24. The matter is remitted to the trial court concerned to consider and

decide the application of the applicant, under Section 311 Cr.P.C. afresh, in accordance with law and in the light of the observations made hereinabove, within a period of eight weeks, from the date of production of a certified copy of this order.

25. The application is **allowed** at the admission stage.

(Shree Prakash Singh,J.)

July 15, 2026
Raj