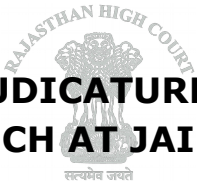




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4401/2026
CNR: RJHC020651242026 | URN: CRLMP / 10053U / 2026

Sattar S/o Nuru, Aged About 50 Years, R/o Village Bhor, Police
Station Pahari, District Deeg (Rajasthan)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. Anuj Rohila, Adv.
For Respondent(s) : Mr. Vivek Choudhary, Adv.

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

Reportable

19/08/2026

1. The instant Criminal Misc. Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') has been filed against the order dated 18.03.2026 passed by learned Additional District & Sessions Judge, Kaman, District Deeg in Sessions Case No.05/2012, dismissing the application filed by the petitioner under Section 311 Code of Criminal Procedure, 1973 ('Cr.P.C') seeking re-summoning of witnesses namely: PW-1 (petitioner-Sattar), PW-2 (Imran), PW-3 (Nisha) and PW-5 (Ummed Haji).
2. Learned counsel for the petitioner submits that initially an FIR No.260/2012 at Police Station Pahari, District Deeg was lodged by the petitioner and after investigation, a charge-sheet came to be filed against accused Jamshed and Dilshan for the offences punishable under Sections 302, 323, 341 and 34 of



Indian Penal Code, 1860 ('IPC'). During the course of trial, the petitioner was examined as PW-1 and other witnesses were examined as PW-2 (Imran), PW-3 (Akbar) and PW-5 (Ummed Haji). Thereafter, an application under Section 319 Cr.P.C (corresponding to Section 358 BNSS) was filed for summoning other persons namely: Jameel, Mehmooda and Haseena as additional accused, which came to be allowed by the learned Trial Court.

3. Learned counsel for the petitioner submits that after appearance of the additional accused, charges were framed for the offences punishable under Sections 148, 452, 341, 323 and 302 alternatively 302/149 of IPC. However, after framing of the charges, petitioner and the aforesaid witnesses were not examined on behalf of the prosecution with regard to the additional accused and subsequently, the learned Trial Court summoned the petitioner as well as other witnesses namely: Imran, Anisha and Ummed Haji for their examination through bailable warrants. Counsel submits that the warrants issued by the learned Trial Court were never served upon the petitioner and other witnesses and subsequently, their evidence came to be closed by the learned trial Court vide order dated 11.07.2025.

4. Aggrieved thereby, an application under Section 311 Cr.P.C (corresponding to Section 348 of BNSS) was filed by the petitioner for re-summoning himself and other material witnesses as stated above for examination. However, the learned Trial Court dismissed the application on the grounds: (i) having once closed the prosecution evidence, it could not thereafter exercise the power



under Section 311 Cr.P.C, to re-summon the witnesses; and (ii) entertaining such an application would amount to reviewing its earlier order of closing evidence, which was impermissible in view of the bar contained under Section 362 Cr.P.C (corresponding to Section 403 of the BNSS).

5. Learned counsel submits that Section 311 Cr.P.C confers an independent and substantive power upon the Court to summon or recall a witness at any stage of the inquiry or trial, where such evidence is essential for a just decision of the case. The exercise of such power does not amount to review of the earlier order closing the prosecution evidence. Counsel further submits that Section 362 Cr.P.C cannot be invoked as an absolute bar against exercise of power under Section 311 Cr.P.C during the pendency of the trial. He submits that the witnesses sought to be re-summoned are material prosecution witnesses and their testimony is necessary for just decision of the case and no prejudice would be caused to the accused persons as they would have full opportunity to cross-examine the aforesaid witnesses.

6. Learned Public Prosecutor does not oppose the submissions made by learned counsel for the petitioner.

7. Heard learned counsel for the parties and perused the material available on record.

Scope and Exercise of Power under Section 311 Cr.P.C:-

8. Before advertng to the factual matrix of the case, this Court deems it just and proper to delineate the scope and ambit of Section 311 Cr.P.C., which is reproduced hereinbelow for ready reference:-



"Section 311: Power to Summon material witnesses, 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."

9. Section 311 Cr.P.C confers a wide power upon the Court to summon any person as a witness or to recall and re-examine any person who has already been examined, at any stage of an inquiry, trial or other proceeding. The provision is intended to ensure that the Court has all the material evidence as may be necessary for arriving at a just decision of the case. The crucial consideration under Section 311 Cr.P.C is not merely the stage at which the application is filed, but whether the evidence of the person sought to be examined appears to the Court to be essential for a just adjudication of the case.

10. The Hon'ble Supreme Court in the case of **Vijay Kumar v. State of Uttar Pradesh & Anr., 2011 (8) SCC 136** observed as under:-

"14. There is no manner of doubt that the power under Section 311 of Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that power under Section 311 should be exercised for the just decision of the case. The



wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. **As is provided in the Section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for the just decision of the case."**

(emphasis supplied)

11. The question that now arises for consideration of this Court is whether closure of the prosecution evidence, divests the Court of its power under Section 311 of Cr.P.C. The aforesaid question stands answered by the Hon'ble Supreme Court in the case of **Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271**, wherein it was held as under:-

"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 each case."

12. Similarly, the Hon'ble Supreme Court, in the case of **Varsha Garg v. State of Madhya Pradesh & Ors., 2022 INSC 807**, reiterated the aforesaid position and held as under:-

"32. 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 emphasise 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 realization of justice is manifest.”

(emphasis supplied)

13. The principle that emerges from the above cited decisions is that the crucial consideration under Section 311 Cr.P.C is not whether the evidence had already been closed, but whether his evidence appears to the Court to be essential for a just decision of the case. The provision is aimed at preventing failure of justice on account of inadvertence, omission or an incomplete evidentiary record.

Interplay between Sections 311 and 362 Cr.P.C:-

14. The learned Trial Court also declined to entertain the application filed by the petitioner on the premise that exercise of power under Section 311 Cr.P.C, would amount to reviewing its earlier order of closing prosecution evidence, which is impermissible in view of Section 362 Cr.P.C.

15. At this stage, it would be apposite for this Court to examine the ambit of Section 362 Cr.P.C, which is reproduced hereinbelow for ready reference:-

“Section 362: Court not to alter judgment

Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

16. Upon a careful reading of the aforesaid provision, it is evident that Section 362 Cr.P.C places a restriction on the power of





a criminal Court to alter or review its judgment or final order once it has been signed, except to the limited extent of correcting a clerical or arithmetical error. However, the embargo contained in Section 362 Cr.P.C does not operate so as to prevent the Court, during the pendency of the trial and before the pronouncement of the final order or judgment from exercising its independent and substantive power under Section 311 Cr.P.C to recall or re-summon a material witness.

17. In this regard, it would be apposite to refer to the decision of this Court in **Jagdish Prasad Sharma v. State of Rajasthan, 2018 SCC OnLine Raj 2588** wherein, while dealing with a similar factual situation, the Court observed as under:-

“**18.** So far as second argument regarding applicability of Section 362 Cr.P.C. is concerned, it may be noted here that the Court cannot review the judgment or a final order. **The order dated 15.7.2016 saying that if on 22.8.2016 the complainant will not produce evidence, the same shall be deemed to be closed, cannot be termed as a final order, as Section 311 Cr.P.C., vest in the Court power to grant an opportunity to the complainant to lead the evidence, in the interest of justice.** To test the above argument, it is to be considered, **whether by passing the said order, the Court become functus-officio or not. By virtue of order dated 15.7.2016 the Court had not become functus-officio, as neither the judgment was delivered nor final order was passed.** Therefore, the Court in its wisdom, on 22.8.2016 was well within its right to adjourn the matter on 2.9.2016.

19. In the case of **Jai Singh v. Soma @ Som Nath, reported as 2006 (4) RCR (Cri.) 547**, the Punjab and Haryana High Court held as under:—

“**7.** On 16.8.2002, **the trial Court ordered closure of prosecution evidence, for its failure to conclude evidence, despite numerous opportunities. The petitioner,**



who is the complainant, filed an application, under Section 311 of the Cr.P.C., praying for permission to lead additional evidence. The trial Court dismissed the application holding that it had no jurisdiction to review its order dated 16.8.2002 directing closure of the prosecution evidence.

8. The trial Court, in my considered opinion, erred in jurisdiction and in law, while dismissing the application. It erroneously construed that acceptance of an application, filed under Section 311 of the Cr.P.C., would require it to review its order, dated 16.8.2002. This inference, in my considered opinion, is unwarranted and unsustainable in law. Powers, conferred upon a Court, under Section 311 of the Cr.P.C., are in no manner circumscribed by an order directing closure of evidence. The expressions "at any stage of any inquiry trial or other proceedings under the Cr.P.C.," appearing in Section 311 of the Cr.P.C. clearly suggest that this power can be invoked by a Court at any stage of any inquiry, trial or other proceedings under the Cr.P.C., subject, however, to an over-riding principle that the evidence, sought to be adduced, should appear to the Court to be essential for a just decision of the case, the paramount consideration being "just decision of a case". **To therefore, construe an order directing closure of evidence as a bar to the exercise of powers, under Section 311 of the Cr.P.C. to be an application for review of the order closing evidence, in my considered opinion, would be unwarranted. Such an interpretation to the provisions of Section 311 of the Cr.P.C., does not flow from the language used therein.** The learned trial Court, there fore, committed an error of jurisdiction and law, while dismissing the application, filed by the petitioner. Consequently, the present petition is allowed and the order dated 23.11.2002 is set aside. The learned trial Court shall consider and decide the application, filed by the petitioner/complainant, under Section 311 of the Cr.P.C., afresh, in accordance with law. The parties, through their





counsel, are directed to appear before the trial Court on 9.10.2006."

20. The order passed by the trial Judge on 15.7.2016 that if on a given date the **complainant will not produce pre-charge evidence, the evidence shall be deemed to have been closed, is neither a judgment nor a final order within the ambit of Section 262 Cr.P.C.** Therefore, on a subsequent date, on justifiable cause disclosed as in the present case, the trial Court could afford another opportunity to the complainant to lead pre-charge evidence."

(emphasis supplied)

18. Moreso, the Punjab and Haryana High Court, in the case of **Suresh Kumar v. State of Haryana, 2019 SCC OnLine P&H 6473**, while dealing with a similar issue, held as under:-

"9. In the considered view of this Court, **order of Court to summon any witness after closing of the evidence under section 319 of the Criminal Procedure Code, 1973 cannot be treated as a review of order closing the evidence.** In fact, in common language power under section 311 of the Criminal Procedure Code, 1973 is known as a power to lead additional evidence. Additional evidence, as is the name, is after the evidence has already been closed. **Still further, language of section 311 of the Criminal Procedure Code, 1973 clearly provides that any court may act at any stage of any enquiry, trial or other proceedings, is entitled to summon any person as a witness or examine any person in attendance or recall or re-examine any person already examined.** Thus, it is obvious that wide powers have been given to the Court to examine the witnesses and even recall witness who has already been examined if his evidence appears to be essential to the just decision of the case. **If such power is treated as a review, it would result in defeating the object and intend behind section 311 of the Criminal Procedure Code, 1973."**

(emphasis supplied)

19. Therefore, in view of the aforesaid legal position, this Court finds that there is no conflict between Sections 311 and 362





Cr.P.C, as Section 362 Cr.P.C operates to restrict the Court from altering or reviewing its judgment after the same has been signed, whereas, Section 311 Cr.P.C. confers an independent statutory power upon the Court to summon, recall or re-examine a witness at any stage of the inquiry or trial, subject to satisfaction of the statutory requirements.

20. Consequently, during the pendency of the trial and before the final judgment is pronounced and signed, the Court is not rendered *functus officio* merely because the evidence of a particular witness had earlier been closed. The provisions of Sections 311 and 362 Cr.P.C. operate in distinct fields and are required to be harmoniously construed. Hence, Section 362 Cr.P.C. cannot be invoked as an absolute bar against exercise of power under Section 311 Cr.P.C. to summon, recall or re-examine a witness whose evidence had earlier been closed, where the Court is satisfied that such evidence is essential for arriving at a just decision in the case.

Application to the Facts of the Case:-

21. Adverting to the facts of the present case, it may be noted that the petitioner himself is the complainant and was examined as PW-1 and other witnesses namely: Imran and Ummed Haji were also examined as PW-2 and PW-5 respectively. Thus, the witnesses sought to be re-summoned are not newly introduced witnesses, but material prosecution witnesses who had already entered the witness box. It is further borne out from the record that subsequently, on an application under Section 319 Cr.P.C., Jameel, Mehmooda and Haseena were summoned as additional



accused and charges were thereafter framed against them. The aforesaid material witnesses were required to be examined at the subsequent stage of the proceedings, however, the learned trial Court without ensuring their presence, proceeded to close the prosecution evidence noting that the aforesaid witnesses were not appearing before the Court, despite service of summons.

22. In the facts and circumstances of the present case, this Court is of the considered opinion that the evidence of PW-1 Sattar, PW-2 Imran, PW-3 Anisha and PW-5 Ummed Haji is essential for the just decision of the case, they being the principal prosecution witnesses and their testimony assumed even greater significance in view of the subsequent summoning of additional accused and framing of charges against them. Therefore, their examination is necessary for the just decision of the case, whereas the interest of the accused can adequately be safeguarded by affording them full and effective opportunity to cross-examine the said witnesses.

23. In view of the aforesaid discussion, this Court is of the considered opinion that the learned Trial Court has erred in dismissing the application under Section 311 Cr.P.C on the ground that entertaining the same would amount to reviewing its earlier order of closing the prosecution evidence. It is clear that the power under Section 311 Cr.P.C. is an independent statutory power and its exercise in the facts of the present case does not amount to review of the earlier order and the same can be considered even after closing of the evidence.



24. Consequently, the present petition is allowed and the impugned order dated 18.03.2026 passed by learned Additional District & Sessions Judge, Kaman, District Deeg in Sessions Case No.05/2012 is hereby set aside. The learned Trial Court is directed to summon and examine/re-examine the following witnesses namely: PW-1 (Sattar), PW-2 (Imran), PW-3 (Anisha) and PW-5 (Ummed Haji), strictly in accordance with law. The counsel for the petitioner is also directed to secure presence of the aforesaid witnesses for their examination. The accused persons shall be afforded full and effective opportunity to cross-examine the aforesaid witnesses and the learned Trial Court shall thereafter proceed with the trial in accordance with law.

25. However, it is made clear that the observations made hereinabove are confined solely to the adjudication of this petition and shall not be construed as an expression of opinion on the merits of the case.

26. Stay application and all pending application(s), if any, stand disposed of.

(ANIL KUMAR UPMAN),J

54/----