

Criminal Appeal No. _____ of 2026
[@ Special Leave Petition (Crl) No.12169 of 2026]

...Appellant

Versus

...Respondents

ORDER

Leave granted.

2. The question arising in the above case is as to the sustainability of an application under Section 311 of the Code of Criminal Procedure, 1973¹ to examine certain witnesses after the examination of the accused under Section 313 CrPC had commenced on 13.04.2024, in a trial, which commenced in the year 2017. The Additional District and Sessions Judge-II Gopalganj, where the trial was pending, rejected the application which was confirmed by the impugned order of the High Court. The complainant an injured witness, is the

¹ For brevity, 'the Cr.P.C.'

appellant here; he having filed the application under Section 311 before the Sessions Court.

3. On the brief facts, it is to be noticed that there was an altercation between the accused and the injured, wherein accused No.1 was accused of attacking the appellant's father with a spear, accused Nos.3 & 4 of an assault with an iron rod and accused No.2 having struck the appellant on the head with a sword. After investigation, charge was laid only against A1 and A2 that against A3 and A4, both women, having been dropped. Cognizance too was taken only against A1 and A2 and the trial proceeded and concluded, when the application under Section 311 was filed. Both the Trial Court and the High Court found fault, on the premise that it was a dilatory tactic and the attempt was to plug the lacunae in the testimony already recorded.

4. Normally, we would not have entertained the application under Article 136 of the Constitution of India, however, in the present case, what is projected is a clear failure of the prosecution to properly conduct the trial. The appellant and his father were injured in the incident. The father was not examined and the other witnesses sought to be examined are the Doctor, who attended to the injured and the

Investigating Officer; crucial witnesses. The absence of whom could lead to even an acquittal for reason of the shoddy prosecution carried out on the allegation of lacunae being attempted to be plugged; it is the prosecution that proffers witnesses in a trial and here, the failure is pointed out by the *de-facto* complainant.

5. We are unable to sustain the orders passed and set aside Annexure P4 order of the Additional District and Sessions Judge-II Gopalganj and the impugned order of the High Court. The application under Section 311 shall stand restored before the Trial Court and the prayer for examination of the injured witness, the medical officer and the Investigating Officer shall definitely be permitted. If any other witnesses are sought to be examined, which the prosecution has left out, as is the case of the injured witness and the medical officer, the Trial Court shall bestow its consideration to such request too. The witnesses shall be examined and proffered for cross-examination. Section 313 shall be commenced from the stage, it was stopped, ensuring that any incriminating circumstance brought out in the testimony of the witnesses now examined are also put to the accused.

6. We cannot but express a note of caution, that when there is total failure of the prosecution, the Court should with alacrity question the prosecution's conduct in not examining crucial witnesses. The Trial Court is not a moot spectator and even in the role of an unbiased adjudicator has the responsibility to ensure that the best evidence is not suppressed by the prosecution, as in this case, where even the Medical Officer and the Investigating Officer was not examined.

7. The appeal stands allowed with the above directions.

8. Pending application(s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
AUGUST 24, 2026.**

ITEM NO.21

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No.12169/2026

[Arising out of impugned final judgment and order dated 08-05-2026 in CRLM No. 64140/2024 passed by the High Court of Judicature at Patna]

ANIL SINGH @ ANIL KUMAR SINGH

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ORS.

Respondent(s)

IA No. 190907/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 190908/2026 - EXEMPTION FROM FILING O.T.
IA No. 206223/2026 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 24-08-2026 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) :Mr. Ashish Kumar Pandey, Adv.
Mr. Kumar Harshvardhan, Adv.
Mr. Suyash Rawat, Adv.
Mr. Aman Naqvi, Adv.
Mr. Mayank Pandey, AOR

For Respondent(s) :Mr. Samir Ali Khan, AOR
Mr. Pranjal Sharma, Adv.
Mr. Kashif Irshad Khan Faridi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is allowed in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed order is placed on the file)