



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.602 of 2025
Date of Decision: 08.04.2026

Madan Lal **.....Petitioner**

Versus

State of Himachal Pradesh and Another **.....Respondents**

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Ashutosh Bhardwaj and Mr. Manish Kumar, Advocates.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan and Mr. S.D. Vasudeva, Deputy Advocates General, for State.

Mr. Naresh K. Sharma, Advocate, for respondent No.2.

Sandeep Sharma, J. *(Oral)*

By way of instant petition filed under S.528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter, 'BNSS'), the petitioner has challenged order dated 5.6.2025 passed by learned Additional Chief Judicial Magistrate, Court No.1, Ghumarwin, District Bilaspur in Cr. Misc. Application No. 416 of 2025 (Case No. 280-4 of 2025) in Cr. Case No. 73-2 of 25/16 titled State v. Madan Lal, whereby an application under S.311 CrPC having been filed by the petitioner for re-examination



of PW-16 Satish Kumar, who later on came to be arrayed as an accused, came to be rejected.

2. It is averred in the application that since PW-16 Satish Kumar had been arrayed as an accused, on the basis of supplementary Challan, as such, his re-examination is necessary. Besides this, re-examination of PW-3 Pawan Kumar is also sought, being prosecution witness of spot demarcation/inspection.

3. The respondent-State, while filing reply to the application has taken objection that supplementary Challan was filed in the court in 2016 and thereafter statement of Satish Kumar was recorded. It is further pleaded by the respondent-State that sufficient opportunity was granted to the accused to cross-examine Pawan Kumar and Satish Kumar, who were cross-examined at length by the counsel of accused. It is submitted in the reply that no justifiable ground has been given in the application, necessitating re-examination of aforesaid persons.

4. Learned court below observed that supplementary Challan was filed on 20.10.2016 and notice of accusation/charge was put to accused Satish Kumar on 18.9.2017. Thereafter, Pawan Kumar and Satish Kumar were examined on 1.1.2020 and they were cross-examined at length by defence counsel, as such, due opportunity was granted to the accused to examine/cross-examine these witnesses. It is



further observed in the impugned order that case is an old one and matter is listed for recording statement of accused under S.313 CrPC.

5. Having taken note of aforesaid facts, this court finds no illegality or perversity in the order passed by learned court below, thereby rejecting the application of petitioner/accused for re-examination of aforesaid witnesses, in view of the fact that firstly the application does not disclose what new facts have emerged, necessitating re-examination of the witnesses, sought to be re-examined and secondly, even if it is assumed that some new facts have come to the fore, then also, the accused has availed opportunity to cross-examine these witnesses, after filing of supplementary Challan and naming of witness Satish Kumar as an accused, therefore, this court agrees with the order passed by learned court below, which is accordingly upheld.

6. At this stage, it would be apt to take note of the fact that though S.311 CrPC, casts a duty upon the court to recall a witness, if the situation so warrants. It is worth to note that power under Section 311 Cr.P.C. must be exercised with the care, caution and circumspection and only for strong and valid reasons. The recall of a witness already examined should not be a matter of course and discretion given to the court in this regard has to be exercised judicially



to prevent failure of justice. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society.

7. In view of above, I find no merit in the petition, which is accordingly dismissed. The order dated 5.6.2025 is upheld. Interim directions, if any, stand vacated. Record if called, be sent back forthwith. Needless to say that the Court below shall deal with the evidence of PW-16 Satish Kumar, who now stands arrayed as an accused, in accordance with law, keeping in view the fact that statement of an accused cannot be relied to ascertain the guilt of another co-accused.

April 08, 2026

Vikrant/Rajeev Raturi

**(Sandeep Sharma),
Judge**