



2026:AHC:128333

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5482 of 2026

Ghanshyam Dubey

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Sudeep Dwivedi
Counsel for Respondent(s)	:	G.A.

Court No. - 45

HON'BLE VIVEK KUMAR SINGH, J.

1. Counter affidavit filed today is taken on record.
2. As per the report of C.J.M., Varanasi dated 17.06.2026, notice has been served upon opposite party no. 2. As per paragraph no. 3 of the counter affidavit filed by State of U.P., notice has been served upon opposite party no. 2 of the present case. Despite service of notice, no one has appeared on behalf of opposite party no. 2 to contest the present criminal appeal.
3. Heard Sri Sudeep Dwivedi, learned counsel for the appellant and learned A.G.A. for the State and perused the record.
4. The present appeal under Section 14A(1) of SC/ST Act has been filed with following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the instant Criminal Appeal and set-aside the order dated 17.02.2024 as well as 11.5.2026 thereby rejected the recall application dated 6.9.2024 filed by the appellant in S.T. No. 160 of 2003, State vs. Ghanshyam Dubey, under Section 323, 325, 504, 506 I.P.C. and 3(1)(x) S.C./S.T. Act, Police Station Jansa, District Varanasi and further be pleased to stay the further proceeding of S.T. No. 160 of 2003, State vs. Ghanshyam Dubey, pending before learned court of Special Judge (S.C./S.T. Act), Varanasi during the pendency of present criminal appeal before this Hon'ble Court. And/or may pass such other and further order which this Hon'ble Court may deem fit and proper

under the circumstances of the case. Otherwise the appellant shall suffer irreparable loss and injury."

5. It is submitted by the learned counsel for the appellant that the appellant is facing criminal trial under Section 323, 325, 504, 506 of I.P.C. and Section 3(1)(x) of SC/ST Act, and he has been regularly attending the court. The PW-2- Smt. Minta Devi, appeared in the trial court for her cross-examination, but she was ill and was vomiting in the court. The counsel for the appellant did not appear before the trial court to cross-examine the aforesaid witness, therefore, the opportunity for cross-examination of aforesaid witness was closed by by learned trial court vide order dated 17.02.2024.

6. It is contended by the learned counsel for the appellant that a recall application was moved under Section 311 of Cr.P.C. by the appellant on 06.09.2024, wherein it was prayed that PW-2- Smt. Minta Devi be summoned for cross-examination. The aforesaid application dated 06.09.2024, moved under Section 311 of Cr.P.C., was rejected by the learned trial court vide order dated 11.05.2026 and no opportunity for cross-examination of the aforesaid witness was given by the learned trial court vide order dated 11.05.2026.

7. It is further submitted that the aforesaid witness is the witness of the fact and in case opportunity is not granted to the appellant, he will not be able to prove his innocence. He further prayed that one more and last opportunity be granted to the appellant to cross-examine the aforesaid witness and he is ready to bear the expenses of the aforesaid witness.

8. Per contra, the learned A.G.A. opposed the prayer of the appellant by blaming that the adequate opportunity of the cross-examination had already been afforded to the appellant and present appeal has been filed with a view to delay the proceedings of the trial. It is further submitted by the learned A.G.A. that PW-2- Smt. Minta Devi was examined in the trial court on 13.08.2012 and she appeared for cross-examination on 17.02.2024, but her cross-examination was not done by the defence counsel, therefore, the learned trial court rightly and correctly closed the opportunity for cross-examination of PW-2- Smt. Minta Devi who

happens to be an elderly lady and she was suffering from several ailments related to old age. It is prayed by the learned A.G.A. that the present appeal has no force and is liable to be dismissed.

9. Before going into factual discussion of the present case, it is necessary to discuss the legal position relating to the controversy at hand. The section 311 of Cr.P.C is reproduced as under:-

" S.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."

10. On the analysis of the Section 311 Cr.P.C., it appears that section 311 Cr.P.C. clothes the court with the following powers. According to first part of the Section, the Court can exercise the power :-

"(1) to summon any person as a witness, or.

(2) to examine any persons in attendance, though not summoned as a witness, or,

(3) to recall and re-examine any person already examined.

The second part, which is mandatory and imposes an obligation on the Court:-

(1) to summon and examine, or

(2) to recall and re-examine any such person, if his evidence appears to be essential to the just decision of the case."

11. In **Raja Ram Prasad Yadav Vs. State of Bihar and Anr., A.I.R 2013 (SC) 3081**, it has been held that it is, therefore imperative that invocation of Section 311 Cr.P.C and its application in a particular case can be ordered by the Court, only by bearing in mind the object and

purport of the said provisions, namely, for achieving a just decision of the case. The power vested under the said provisions is made available to any court at any stage in any inquiry or trial or other proceedings initiated under the code for the purpose of summoning any person as a witness or for examining any persons in attendance, even though not summoned as witnesses or to re-call or re-examine any person in attendance. In so far as recalling and re-examining of any person already examined, the court must necessarily consider and ensure that such re-call and re-examination of any person, appears in the view of the court to be essential for the just decision of the case.

12. It appears that the cross-examination of the PW-2- Smt. Minta Devi is essential for the just decision of the case. One more and last opportunity may be granted to the appellant to cross-examine the aforesaid witness.

13. Accordingly, the present appeal is **allowed** and impugned order dated 11.05.2026 passed by the learned trial court is hereby set aside, subject to payment of Rs. 5,000/- which shall be deposited before the trial court by means of demand draft in the name of PW-2- Smt. Minta Devi, within a period of three weeks from today. Upon such deposit, fresh application, if filed by the counsel for the appellant, for recalling the aforesaid witness/ PW-2 Smt. Minta Devi, shall be considered and decided by the learned trial court without being influenced vide its earlier order dated 11.05.2026 and the aforesaid witness would be summoned for the purpose of further cross-examination by the appellant. The amount so deposited shall be handed over to the aforesaid witness/PW-2- Smt. Minta Devi upon her appearance in the trial court for cross-examination. It is made clear that this shall be the last and final opportunity for the cross-examination of the PW-2- Smt. Minta Devi and no further adjournment would be granted to the appellant in any manner whatsoever.

(Vivek Kumar Singh,J.)

June 19, 2026
A.P. Pandey