



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.54/2025**

CENTRAL BUREAU OF INVESTIGATION
ANTI CORRUPTION BRANCH
Plot No. 1& 2, Penha De Franca,
Porvorim, Goa.

... PETITIONER

Versus

1. VALIVETI VENKATA NARASIMA
SASTRY, s/o late Siva Sastry, 66 years
Occupation Officer (Sclae I) Canara
bank, Ponda Goa, Now posted at Canara
Bank, Chataparru, Eluru Mandal, West
Godavari, District, Andhar Pradesh

2. SHRI YASIN K. SHAIKH, Kasim Haji
Abas Shaikh, aged 49 years, present address
Rabiyam-Yusuf Enlave, F-Block, 2nd Floor,
Near Naga Masjid, Ponda Goa and Permanent
Address A/P W No.20/636, Near Lande
Hospital, Ichalkaranji kolhapur,
Maharashtra.

... RESPONDENTS

Ms Asha Desai, Special PP for the Petitioner.

Mr Dinesh Naik with Ms Shruthi Arabekar, Advocates for
Respondent No.1.

Mr Shashant Naik and Ms Vaibhavi Kanekar, Advocates for
Respondent No.2.

CORAM: VALMIKI MENEZES, J.

DATED: 22nd AUGUST 2025

ORAL JUDGMENT:

1. The Registry to waive objections and register the matter.

2. Rule. The rule is made returnable forthwith at the request of and with the consent of learned counsel for the parties.

3. This petition takes exception to order dated 06.12.2024 dismissing the petitioner's application under Section 311 of the Code of Criminal Procedure for summoning un-cited witnesses. The application was filed in Special Case No.14/2013/D pending before the Additional District Judge and designated Prevention of Corruption Court, where charge-sheet dated 08.04.2013 alleging commission of offences punishable under Sections 120-B r/w 420, 467, 468 and 471 IPC and under Sections 13(2) r/w 13(1)d of Prevention of Corruption Act 1988, to have been committed by the respondents.

4. The main contention raised in this petition is that, of the twelve witnesses sought to be now examined under Section 311 of the Code of Criminal Procedure, witness nos.2 to 9 are signatories to panchanamas recording the specimen signatures of the accused and other writings on documents, which are part of the charge-sheet and the witnesses are named in the panchanamas; The other witness, who is the first witness on the list of witnesses now sought to be examined, is the sanctioning authority, to prove sanction granted for prosecution of the accused. It is the case of the petitioner that the sanction order for prosecution of the accused, is part of the charge-sheet and only the names of the witnesses to prove these documents had been listed out from the list of witnesses while filing of the charge-sheet. It is the prosecution's case that this was realized during the cross-examination of the investigating officer whose examination-

in-chief has been completed, though he has not yet been cross-examined.

5. Reliance is placed by the learned Special Public Prosecutor for the petitioner on the judgments of the Supreme Court in *Natasha Singh v/s. CBI (State)* reported in *2013 (5) SCC 741* and *Vijay Kumar & Ors. v/s. State of U P AND ANR.* reported in *2011 (8) SCC 136*.

6. The petition has been opposed by the respondents, who supported the impugned order mainly on the count that the defence would be now derailed, and allowing such witness to be examined would amount to filling in the lacuna in the case of the petitioner before the Trial Court. Reliance was placed by Mr Dinesh Naik, learned advocate for respondent no.1 on two judgments of the Supreme Court in *Swapan Kumar Chatterjee v/s. Central Bureau of Investigation* reported in *(2019) 14 SCC 328*, *Ashutosh Pathak v/s. The State of Uttar Pradesh & Anr.* reported in *2025 SCC OnLine SC 1341* and *Shonika @ Sonika Ramesh Salunke v/s. The State of Maharashtra – Criminal Writ Petition No.1558 of 2021*.

7. Section 311 empowers the Court to, at any stage of the trial, allow production of evidence. The entire purpose of the provision of Section 311 is to empower a Court, after considering whether allowing such evidence caused prejudice to the party, to allow the party to produce the same, and to meet the ends of justice. In *Swapan Kumar Chatterjee (supra)* the Hon'ble Supreme Court held as under:-

“10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

8. In the present case, the witness nos.2 to 9 are signatories to the panchanamas whereby specimen signatures of the accused and other witnesses were taken down and sent to a handwriting expert. None of the accused have set up a defence of denial of

these specimen signatures or that the handwriting was not theirs. The evidence of the prosecution is not yet completed, and though the investigating officer has led his examination in chief, his cross-examination is yet to commence. All documents in which the witnesses now sought to be examined are on record, form part of the charge-sheet. The accused would therefore not be caught by surprise, nor is it their case that the evidence now sought to be recorded at the behest of the pancha witnesses, to prove specimen signatures taken, is inconsistent with any of the defences taken whilst cross-examining the other witnesses.

9. The first witness sought to be examined, as arrayed in the application under Section 311, is the sanctioning authority. The sanction granted to the prosecution of the case forms part of the charge-sheet, and the name of the sanctioning authority, according to the prosecution was missed to be added in the list of witnesses though the name of the witness is known to the accused. This would be a relevant witness to determine, whether the sanction was properly granted, as the question of sanction goes to the root of the jurisdiction of the designated court examining a case under the Prevention of Corruption Act.

Though the defence has been raised that examining this witness would fill in the lacuna in the prosecution's case, it is not known in what manner, the examination of this witness would displace the defence of the accused, since the sanction granted by the sanctioning authority is part of the charge-sheet and the process and the material considered whilst granting of the sanction is stated therein. No prejudice would be caused to the

accused if the sanctioning authority is examined, as the prosecution has still not closed its case.

10. The Trial Court appears to have been swayed more by the delay in filing the application since the charge-sheet is of the year 2013 and the investigating officer is now under examination. Apart from the delay in filing the application there are no other considerations referred to by the Trial Court or the relevance of the witness or in what manner the case of the accused would be prejudiced. The Trial Court has also not given any consideration as to whether examining the witnesses, who are signatories to documents which are part of the record, would in any manner derail the defence raised by the accused till this stage. As held by me, examination of these witnesses would in no manner prejudice the defence of the accused.

11. *Ashutosh Pathak (supra)*, cited by the respondents, on facts is distinguishable and does not apply to this case; In that case, the prosecution evidence had been completed and the statement under Section 313 of the accused/petitioner therein had been recorded. It was at that stage that the application under Section 311 was moved. In *Shonika Salunke (supra)*, after the trial had concluded and final arguments of the defence had been heard, the prosecution moved an application seeking to examine two additional witnesses. Considering the stage at which the application was moved, this Court upheld the dismissal of the same. As seen from the above facts, what is held in *Shonika Salunke (supra)* would not apply to the facts of the present case, where the prosecution evidence is yet to be concluded.

12. For these reasons, the impugned order is quashed and set aside and the application dated 12.11.2024 under Section 311 is allowed. Prosecution/petitioner is permitted to examine the witnesses listed in the application. It would be preferable that if any of these witnesses are to be examined, such witnesses be examined prior to commencing the cross-examination of the investigating officer, since the accused would be then in a better position to effectively cross-examine the investigating officer with regard to the depositions of witnesses now relied on.

13. The impugned order is quashed and set aside. Rule is made absolute in terms of prayer clause (a) of the petition which reads as under:

“a) A writ of certiorari or in a writ in the nature of certiorari or such other writ this Hon'ble court deems fit in the interest of justice thereby calling for the records and proceedings and after perusing the records quash and set aside the impugned order dated 06.12.2024 passed by the Id. Special Judge, North Goa at Panaji Goa in Special Case (SCCDC) No. 14/2013.”

VALMIKI MENEZES, J.