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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 158 OF 2025**

VAISHALI
ANIL
TIKAM

Nitin Shahaji Patil

...Applicant/s

Versus

The State of Maharashtra

...Respondent/s

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Mr. Anant Devakare a/w. Shubham Sudam Sane h/f. Mr. Priyal Sarda,
Advocate for Applicant.

Ms. R.D. Humane, APP for Respondent-State.

PSI Anand Aware, Swargate Police Station, Pune City present.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28th AUGUST, 2026.

P.C. :

1. Heard learned counsel for the Applicant and learned APP for the State.
2. The challenge in this Revision Application is to the impugned Judgment & Order dated 5th March 2025, passed below Exh. 24 whereby the Learned Principal and District Sessions Judge, Pune allowed the application filed by the prosecution for issuance of witness summons to the Secretary, Latur Education Board.
3. It is contention of learned counsel for the Applicant that the Applicant was convicted by the Learned Judicial Magistrate First Class, (Motor Vehicle Court) Pune. The said Judgment & Order was challenged before the Learned Sessions Judge, Pune. The Learned Sessions Judge remanded the matter to Learned Judicial Magistrate First Class, Pune, for

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fresh hearing. Thereafter, the said order was challenged in Revision Application by the Applicant before this Court. This Court [Coram: Shri S.M. Modak, J.] quashed and set aside the remand order and directed the Learned Sessions Judge to hear the appeal on merit. After remanding the appeal to the Learned Sessions Judge, the prosecution filed an application below Exhibit 24 for issuance of witness summons to the Secretary, Education Board, Latur. The Learned counsel further submitted that the similar application was filed before Learned JMFC in the year 2017 and the said application was rejected. The said order was not challenged. Thereafter, the Applicant was convicted. When the earlier application for issuance of summons was already rejected on the ground of filling up the lacuna, the same application could not have been filed by the prosecution and should not have been allowed by the Learned Sessions Judge. However, the said application was allowed. It would amount to fill up the lacuna in prosecution case. The order passed by the Learned Sessions Judge is erroneous and, therefore, requested to allow the application. It is further contention of learned counsel for the Applicant that the application has been allowed after 15 years from the registration of the case. He relied upon the following judgments.

- (i) **Rahvinder Singh Vs. State of Haryana¹;**
- (ii) **Ajitsinh Chehuji Rathod Vs. State of Gujarat and Anr.²;**

1 (2016) 14 Supreme Court Cases 671

2 (2024) 4 Supreme Court Cases 453

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(iii) **Sri J. Ramesh S/o. Late Gopalachar And M/s. Lakshmi Precious Jewellery Pvt. Ltd.**³

4, It is contention of learned APP that allegations against the Applicant are that he changed the mark sheet of his Xth Board Examination and secured job at MSRTC. The Applicant was convicted by the Learned JMFC, Pune. Thereafter, an appeal was preferred against the said impugned Judgment & Order before the Learned Sessions Judge. After hearing both the parties, the Learned Sessions Judge remanded the matter to JMFC for fresh hearing as the concerned witness was not examined to prove Exhibit 30 i.e. mark sheet of the Applicant. Learned APP further submitted that the remand order was challenged before this Court. This Court quashed and set aside the remand order and directed the Appellate Court to go through the record and hear the parties on the point of any attempt made to examine the witness to prove Exhibit-30. On the basis of the observations of this Court, the prosecution filed an application to examine the witness to prove Exhibit-30. The order passed by the Learned Sessions Judge is well reasoned. No interference is required in it and, therefore, requested to reject the Application.

5. I have heard both learned counsel. Perused impugned Judgment & Order. While allowing the application filed by the prosecution for issuance of witness summons to the Secretary, Latur

³ In Criminal Petition No. 12045 of 2024 dated 07/03/2025.

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Education Board, relating to the mark sheet of the applicant. The Learned Sessions Judge observed that the original mark sheet was exhibited and Applicant had not objected to the exhibit of the said document and prosecution thought that the document was proved. The Learned Sessions Judge further observed that Exhibit -30 is an important and relevant document, therefore, to prove the contents of said documents through the concerned person of Latur Education Board was necessary. Learned Judge further observed that the entire case depends on Exhibit -30. The Trial Court should have given the opportunity to the prosecution to prove the Exhibit -30 when the application (Exhibit -56)was filed by the learned APP before the Learned Trial Court prior to the judgment. That opportunity was denied by the learned Trial Court to prove the said document and remanded matter to Learned JMFC. Thereafter, this Court, while setting aside the remand order observed that the Appellate Court is at liberty to exercise necessary power if it deems proper as per the settled law. Section 391 of the Code of Criminal Procedure, 1973, empowers the Appellate Court to take additional evidence in appropriate case. The examination of concerned witness under Section 391 of the Cr.PC is necessary to decide the appeal on merits. On the basis of observations of this Court, the Learned Sessions Judge has allowed the application for issuance of witness summons.

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6. I do not find infirmity in the observations of the Learned Sessions Judge, as the application was allowed as per the observations and directions of this Court. Moreover, by examining the concerned witness, no prejudice would be caused to the Revision Applicant as he will get opportunity to cross examine the witness. As regards to the contention of learned counsel for the Applicant that allowing the application would amount to filling up lacuna in prosecution case. In my view, it is not for first time the application was filed to examine the witness by the Latur Education Board. It was already filed before the Trial Court, but the Trial Court without considering the merit of the case, rejected the said application without giving any reasonable ground. Thereafter, case proceeded and applicant was convicted. The said Judgment & Order was challenged before the Sessions Court and Learned Sessions Judge remanded the matter to the trial court. The said remand order was challenged before this Court. While setting aside the remand order, this Court directed the prosecution to examine witness to prove Exhibit -30. It shows that as per the observations of this Court, the impugned order is passed. The order of this Court was not challenged by the Revision Applicant. I have gone through the case laws cited by learned counsel for Revision Applicant. The facts of cited cases and present case are different as the impugned order is passed as per observations and directions of this

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Court, I do not find any infirmity in the impugned order and I pass following order:

Criminal Revision Application is rejected.

(SHIVKUMAR DIGE, J.)