

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1033 OF 2015

Dnyandeo s/o Kisan Garje,
Age: 58 years, Occ: Agri.,
R/o. Khilad, Tq. Ashti,
Dist. Beed.

...Applicant

versus

Tatyaba s/o Kisan Garje,
Died
Ambadas s/o Tatyaba Garje & ors.

...Respondents

.....
Mr. V. M. Chate, Advocate for applicant
Mr. S. A. Deshmukh, Advocate for respondents
.....

CORAM : N.W. SAMBRE, J.

DATE : 16th OCTOBER, 2015

ORAL ORDER :

The order passed by the Judicial Magistrate, First Class, Ashti, District Beed, on 16/02/2015 below Exhibit-112 in Summary Case No. 49 of 2007, rejecting grant of adjournment so as to adduce evidence permitting to examine the complainant's witnesses to prove the case for an offence punishable under Section 323 of the Indian Penal Code, is the subject matter of the present application under the provisions of Section 482 of the Code of Criminal Procedure.

2. Heard Mr. Chate, learned Counsel for the applicant at length. He submits that present case is persuaded by the applicant

since 2007 and it is on last two occasions, the applicant that too, for cause of his Advocate, has sought adjournment, which was denied by the Court, which according to him, resulted in denial of justice. He would submit that the provisions of Section 311 of the Code of Criminal Procedure would apply to the present matter and by relying upon the judgment of this Court in the matter of ***State of Maharashtra vs. Darshana Mukesh Jalodiya and another*** reported in ***2013 ALL MR (Cri) 3144*** would urge that powers under Section 311 of the Code of Criminal Procedure can be exercised even after recording of statement of the accused.

3. The application is opposed by learned Counsel for the respondents/accused on the ground that the applicant was instrumental in prolonging the present litigation. He has invited my attention to various orders passed by learned Court below while rejecting repeated request made by the applicant for grant of opportunity to examine the witnesses. In support thereof, he has also placed reliance upon the entries in the *roznama* of the case so as to demonstrate that the applicant herein has prolonged the matter pending before the Court below.

4. Having considered the rival contentions of the parties, it is noticed that, for times, the case of the applicant was considered for

grant of opportunity to adduce evidence by the witnesses of the applicant/complainant. The earlier three times, the said request was rejected. Apart from *roznama*, it depicts that the matter was adjourned from time to time at the behest of the applicant.

5. In view thereof, in my opinion, rejection of opportunity as sought for at the behest of the present applicant, by learned Court below, is just and proper. It does not call for interference. As such, the present application stands rejected.

[N.W. SAMBRE, J.]