

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

CRIMINAL WRIT PETITION NO. 925 OF 2015

Nalini Bhalerao Patil

Age : 46 Years, Occ.

Household, R/o : Shirud,

Taluka Amalner, Dist. :

Jalgaon.

.... PETITIONER/

[FIRST INFORMANT]

V E R S U S

1. The State of Maharashtra
Through Amalner Police
Station, Amalner, Dist. :
Jalgaon.

2. Harischandra Kisan Patil
Age : 43 Years, Occ.
Agriculture, R/o : Shirud,
Taluka Amalner, Dist. :
Jalgaon.

3. Vasant Baliram Patil
Age : 54 Years, Occ.
Agriculture, R/o : Shirud,
Taluka Amalner, Dist. :

Jalgaon.

4. Narendra Vitthal Patil
[deceased].

5. Narendra Rajaram Patil
Age : 38 Years, Occ.
Agriculture, R/o : Shirud,
Taluka Amalner, Dist. :
Jalgaon.

6. Vishwas Hiranman Patil
Age : 49 Years, Occ.
Agriculture, R/o : Shirud,
Taluka Amalner, Dist. :
Jalgaon.

7. Subhash Fakira Patil
Age : 53 Years, Occ.
Agriculture, R/o : Shirud,
Taluka Amalner, Dist. :
Jalgaon.

8. Mahendra Dattatray Patil
Age : 34 Years, Occ.
Agriculture, R/o : Shirud,
Taluka Amalner, Dist. :
Jalgaon.

.... RESPONDENT NOS.
2 TO 8/[ORI. ACCUSED]

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Mr. G.S.Rane, Advocate for Petitioner.

Mr. S.P.Sonpawale, A.P.P. for R.No. 1 – State.

Mr. G.J.Pahilwan, Advocate for R.Nos. 2,3,5 to 8.

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CORAM : INDIRA K. JAIN, J.

DATE OF JUDGMENT : 18th DECEMBER, 2015

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. This petition takes an exception to the Order dated 08/07/2015 passed by the learned Judicial Magistrate First Class, Amalner, district Jalgaon below Exh. 83 in S.C.C. No. 424/2009.

3. The facts giving rise to the Petition may be stated in brief as under.

Petitioner is the complainant. She lodged report against respondent Nos. 2 to 8. On the report of petitioner

Crime No. 115/2009 was registered for the offences punishable u/ss 143,147,354,323,504 and 506 of the Indian Penal Code. On completing investigation charge sheet was submitted to the Court. Trial commenced and prosecution examined some of the witnesses. Respondent No. 4 Narendra Vitthal Patil died during pendency of the case.

4. On 09/03/2015 and 02/04/2015 applications Exhs. 65 and 72 were moved by prosecution for issuance of summons to witnesses (i) Dr. R.C.Wagh (ii) Dr. Pasari and (iii) Investigating Officer Mr. D.T.Chavan. The applications were allowed and accordingly summons were issued.

5. Thereafter on 08/04/2015 Exh. 74 an application was moved to issue show cause notice to the Police Inspector, Amalner for failure to effect service of summons to the witnesses. It was rejected on the same day. Learned Magistrate then proceeded to record statement of accused u/s 313 of the Code of Criminal Procedure.

6. On 10/04/2015 learned A.P.P. assisted by complainant filed an application Exh. 83 furnishing fresh

addresses of the witnesses and prayed to grant permission to examine the witnesses and to issue summons to them. Application Exh. 83 was rejected vide order dated 08/07/2015. This order is the subject matter of present Writ Petition.

7. Heard Mr. G.S.Rane, learned counsel for petitioner, Mr. S.P.Sonpawale, learned A.P.P. for Respondent No. 1 – State and Mr. G.J.Pahilwan, learned counsel for Respondent Nos. 2,3,5 to 8. Perused impugned order.

8. The reasons to reject application Exh. 83 have been assigned in para No. 5 of the impugned order. The same reads as under :

“ I have gone through the record of this case. My Ld. predecessor was pleased to pass order below Exh. 1 and thereby the opportunity was extended to the prosecution for securing presence of witness. On perusal of Exh. 72, it prima facie appears that this court has further given opportunity to the prosecution on

02/04/2014 for securing the presence of prosecution witnesses. Due to failure of prosecution to secure the presence of prosecution witnesses finally Exh. 74 was rejected. In my opinion, at the time of recording of statement under section 313 of Code of Criminal Procedure, informant could have objected and thereby pressed the court for issuance of summons to the witnesses. Needless to say that the criminal court can not revert back to the previous stage for the want of inherent powers. I accede to the submission of Ld. Defence counsel that prosecution ought to have filed revision. This court obviously can not sit in as an appellate authority against its own orders. It would be recalcitrant to the policy of law .”

9. It is needless to mention that u/s 311 of the Code of Criminal Procedure the court may at any stage of any inquiry, trial or other proceeding 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. In the case on hand, witnesses who were to be examined were two medical practitioners and an Investigating Officer. Considering the nature of offences alleged by the complainant, examination of both the medical practitioners and an Investigating Officer was essential to the just and fair decision of the case.

11. Learned trial court has observed that criminal court can not revert back to the previous stage for want of inherent powers. The observation is contrary to the object and spirit of section 311 of the Code of Criminal Procedure. Complainant had furnished fresh addresses. She was assisting the prosecution. It was thus a fit case to exercise powers u/s 311 of the Code of Criminal Procedure and grant an opportunity to the prosecution to prove its case. Rejection of application has caused a serious prejudice to the prosecution. On the other hand no prejudice would have been caused to respondent Nos. 2,3,5 to 8 if summons to the witnesses would have been issued.

12. In this premise, this court finds that impugned order is contrary to the object and spirit of section 311 of the Code of Criminal Procedure. The same does not sustain in law. Hence, the following order.

ORDER

- [I] Criminal Writ Petition No. 925 of 2015 is allowed.
- [II] Rule is made absolute in terms of prayer clauses 'A' and 'B'.

[INDIRA K. JAIN, J.]