

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

**CRIMINAL WRIT PETITION NO. 370 OF 2016**

The State of Maharashtra

...Petitioner

versus

1. Dattatraya s/o Laxman Gurjar,  
Age: 48 years, Occ: Business,
2. Ashok s/o Manohar Gurjar,  
Age: 31 years, Occ: Business,
3. Ganesh s/o Manohar Gurjar,  
Age: 31 years, Occ: Business,

All R/o. Laxminarayanpura,  
old Jalna, Jalna.

...Respondents

.....  
Ms. R.P. Gour, A.P.P. for petitioner  
J.P. Legal Associates for respondent Nos. 1 to 3  
.....

**CORAM : N.W. SAMBRE, J.**

**DATE : 13th APRIL, 2016**

**ORAL ORDER :**

Present respondents are facing trial for the offence punishable under Sections 452, 504, 506 read with Section 34 of the Indian Penal Code.

2. In the said proceedings, the statements of present respondents-accused under Section 313 of the Code of Criminal

Procedure were recorded. Thereafter, the present respondents have changed their lawyer and have filed an application Exhibit-71 under Section 311 of the Code of Criminal Procedure, on 30/07/2015 praying therein recalling of the PW-1, 2 and 3 for further cross examination, on the ground that cross examination of above referred witnesses was conducted by earlier lawyer in hurried manner.

3. The application Exhibit-71 came to be rejected by learned Magistrate by an order dated 08/10/2015, which order was reversed by learned Sessions Judge, thereby allowing the application Exhibit-71 filed under Section 311 of the Code of Criminal Procedure vide order 06/01/2016.

4. Learned Sessions Judge, relied upon the certain judgments delivered by this Court while granting the application under Section 311 of the Code of Criminal Procedure.

5. In this back ground, while relying upon the judgment of the Apex Court in the matter of **AG vs Shiv Kumar Yadav and others** reported in **A.I.R. 2015 SC 3501**, learned A.P.P. would submit that the powers under Section 311 of the Code of Criminal Procedure though are discretionary, however, such discretion needs to be exercised, not in a casual manner but for providing fair opportunity to

the parties to the trial. She would then submit that just because there is change of lawyer, that cannot be a ground, which qualifies under Section 311 of the Code of Criminal Procedure to grant such application.

6. Learned Counsel for the respondents submits that this Court in the judgment of ***Mansaram Shaligram Sawalkar and another vs. State of Maharashtra*** reported in ***2011 ALL MR (Cri) 3651*** has observed that the object of criminal trial is to find out truth and it is the right of the accused to have fair opportunity. He would then relied upon the judgment of this Court in the matter of ***Dipak Gangaram Ahirrao and another vs. State of Maharashtra*** reported in ***2006(2) Mh.L.J. (Cri) 89*** so as to submit that the object of Section 311 of the Code of Criminal Procedure is to comply with the principles of natural justice and to give fullest opportunity of hearing to the accused persons.

7. Having bestowed my thoughts to the submissions made, it is required to be gathered from the application Exhibit-71 that the same is moved invoking provisions of Section 311 of the Code of Criminal Procedure for recalling PW-1,2 and 3 for their further cross examination, as there is change of lawyer. Why such recalling is necessary, is at all not spelt out, apart from above reason of change

of lawyer. It is required to be taken note of, these witnesses have already completed their evidence almost about two years back and thereafter statement of the accused under Section 313 of Code of Criminal Proceed is recorded. Thereafter, witness No. 5 in support of spot panchnama was examined by learned A.P.P. as per order of the Court on the application at Exhibit-60 filed at the best of learned A.P.P. and the present respondents have cross examined the said witness.

8. Once the said panch witness PW-2 is examined, in my opinion, same cannot be a ground or gave any cause to the present respondents to recall of the witnesses i.e. PW-1, 2 and 3. The discretion exercised by learned Sessions Judge, in my opinion, in granting application was uncalled for in the light of above observations. The law cited by the learned Counsel for the respondents-accused in the judgment of ***Dipak Gangaram Ahirrao and another*** (supra) is of hardly any assistance.

9. While considering and discussing the scheme of Section 311 of the Code of Criminal Procedure in the matter of ***AG*** (supra) has dealt with the object of such provision in detail in the above referred judgment. Though provisions of Section 311 of the Code of Criminal Procedure confers discretion in the appellate Court to recall

witness at any stage of the trial, however it is required to be noted that such discretion is to be exercised in reasonable manner and that too, with genuine cause. The change of lawyer, in any case, cannot be termed as genuine cause unless it is established before the trial Court that certain circumstances warrant recalling of the said witness so as to achieve the object of fair trial, which does not appear to be a case spelt out in the application Exhibit-71 moved under Section 311 of the Code of Criminal Procedure.

10. In this background, in my opinion, the order passed by the learned Sessions Judge is not sustainable. As such, the order passed by learned Adhoc Additional Sessions Judge-3, Jalna, in Criminal Revision Application No. 113 of 2015 on 06/01/2016 is hereby set aside.

11. The Criminal Writ Petition stands allowed in above terms.

**[ N.W. SAMBRE, J. ]**