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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.487 OF 2021

Prashant Sadanand More ... Applicant
Vs
Mansi Sunil Lambade & Anr. ... Respondents
...

Mr. Sushrut Jadhwar for the Applicant.

Mr. Shrikant S. Shirsat for Respondent No.1.

Smt. Sharmila Kaushik, APP for the Respondent No.2-
State.

PSI S.G.Barkade, Nehrunagar Police Station Mumbai
present.

CORAM : SANDEEP K. SHINDE J.
DATE : SEPTEMBER 28, 2021.

JUDGMENT :

Rule.

2 Rule made returnable forthwith. With consent of
the learned counsel for the parties, matter is taken up for
final hearing forthwith.

3 This application under Section 482 of the Code of Criminal Procedure, 1973 challenges the order dated 24th March, 2021 whereby the complainant's application under Section 311 of the Cr.P.C. seeking to summon the material witness was granted by the learned Additional Sessions Judge, Greater Bombay, Mumbai and permitted prosecution to examine the witness, Pusha Baban Mhaske.

4 Facts essential for the decision of this application are as under:

 Mansi Sunil Lambade (Complainant/Respondent No.1) and the applicant-accused were, Secretary and Chairman of one Housing Society. In the meeting of the society held on 6th January, 2013, General Body had resolved to supersede the managing body of the society. On this issue, quarrel ensued between the complainant and the applicant. Soon after the meeting, while complainant, was returning to her flat, the applicant

allegedly abused, threatened and slapped her in the presence of members of the society. After which she lodged the First Information Report and Crime No.9 of 2013 came to be registered against the applicant under Sections 354, 509, 504 and 506 of the Indian Penal Code, 1860 against the applicant. In the charge-sheet, filed against the applicant, prosecution cited four witnesses; two eye witnesses, besides the complainant and the Investigating Officer. One of the eye witnesses was Smt. Pushpa Baban Mhaske, whose statement under Section 161 of the Code of Criminal Procedure, 1973 was recorded on 22nd January, 2013 (incident 6th January). Although, she was summoned on 3rd August, 2017 and 30th October, 2017, summons could not be served on her; however, on 19th December 2017, she was informed on her mobile phone to remain present in the Court and contact the Investigating Officer. For some reason not known or informed, this witness could not be examined and, therefore, complainant moved an application on 22nd January, 2020 and 10th February, 2020 under Section 311 of

the Cr.P.C. to examine Pushpa Baban Mhaske, as prosecution witness. These applications were supported by the State. The Trial Court rejected the applications on the ground that, although she was summoned on five occasions, she chose to remain absent and further the prosecution did not take appropriate steps to secure her presence before the Court for recording her evidence. Yet another reason for rejection was that application was moved when the case, had reached the stage of final arguments. The order of the Trial Court was carried in Revision before Sessions Court, Mumbai. The Additional Sessions Judge, allowed the revision and permitted prosecution to examine Pushpa B. Mhaske. This order of the Additional Sessions Judge is under challenge.

5 Heard the learned counsel for the parties.
Perused the orders and the notes of evidence.

6 The object of the provision of Section 311 of

Cr.P.C. as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of the victim. It is settled law that powers conferred under Section 311 of the Cr.P.C. should be invoked by the Court only for strong and valid reasons with caution and circumspection. However, the Court can exercise these powers at any stage of trial and, therefore, there is no bar to summon the witness even at the stage of final arguments of the case. Herein, the complainant, P.W.1 examined herself on 18th July, 2017 and Investigating Officer was examined on 22nd September, 2018. After which accused statement under Section 313 of the Cr.P.C. was recorded on 29th March, 2019. On 10th February, 2020, complainant filed written arguments. Roznama shows, the matter was posted for arguments on 29th March, 2019. An application under Section 311 of the Cr.P.C. was moved by the complainant on 12th July, 2019. Yet another application was filed under Section 311 of the Cr.P.C. by the complainant on 22nd January, 2020. I have perused the

notes of evidence and the applications. It may be stated that an application filed under Section 311 of the Cr.P.C. must be allowed if fresh evidence is being produced to facilitate a just decision. Be that as it may, it appears, although Pushpa Mhaske was cited as eye witness, she would not bring fresh evidence but may corroborate evidence of the complainant. Therefore, in my view, her evidence may not be essential to facilitate a just decision of the case. Even otherwise, record shows, application under Section 311 of the Cr.P.C. was moved at the belated stage of the trial. Although there is no bar to move application even after statement of accused is recorded, but in the facts of the case taking overall view, in my view, prosecution has not put forth strong and valid reasons for invoking the powers conferred under Section 311 of the Cr.P.C. For these reasons, the impugned order permitting prosecution to examine Smt. Pushpa Baban Mhaske is quashed and set aside.

7 Revision Application is allowed in the aforesaid
terms.

8 Rule is made absolute in terms of prayer clause
(b) .

(SANDEEP K. SHINDE, J.)