

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

CRIMINAL WRIT PETITION NO. 54 OF 2022

Sudhir Dnyanoba Gade	... Petitioner
Versus	
The State of Maharashtra	... Respondent

....

Mr. Amit A. Yadkikar, Advocate for petitioner
Mr. S. P. Sonpawale, APP for the respondent

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CORAM : R. G. AVACHAT, J.

DATED : 15th FEBRUARY, 2022

PER COURT :-

. Heard.

2. The challenge in this petition is to the order dated 17.12.2021, passed by the learned Additional Sessions Judge, Latur, on Exh.1 in Sessions Case No. 17 of 2019. Vide the impugned order, the learned Judge suo-motu decided to exercise power under Section 311 of the Code of Criminal Procedure (Cr.P.C.) to summon five witnesses for being examined to record their evidence.

3. The learned Advocate for the petitioner (accused) would submit that recording of evidence for both the prosecution and the defence was over. The statement of petitioner under Section 313

Cr.P.C. has also been recorded. The defence of the petitioner has already been disclosed. The witnesses proposed to be examined, may give evidence to overcome the petitioner's defence. Examination of those witnesses would therefore seriously prejudice the petitioner in his defence. The learned Advocate has relied on the judgment of the Apex Court in the case of *A G Vs. Shiv Kumar Yadav and Ors - MANU/SC/0997/2015*.

4. The learned APP would, on the other hand, supports the impugned order.

5. It is a case of drunk driving. Para 2 of the order impugned herein, reads thus:

“2. After going through the record, it appears that material witnesses are required to be examined. One Pradip Lomte is material witness in this case. It is the case of prosecution that he chased the accused and caught him at Tandulwadi junction. One Sugriv Gangaram Kondamangale, Police Head Constable caught the accused at Tandulwadi Junction, as he received intimation from A.P.I. Lahane, but these material witnesses were not examined by the prosecution. Umakant Ashok Bhujbal is also an eye witness is also not examined. Dr. Tahura Khaisar Pasha Sayed also not examined by the prosecution. After going through the prosecution case and documents on record, it appears that evidence of these witnesses is essential to the just decision of the case. Therefore, by invoking the powers under Sec.311 of Cr.P.C., I proceed to pass following order.”

6. The trial Court is In-charge of the case. Before passing the order impugned herein, it went through the record and found that material witnesses are required to be examined. Para 2 of the impugned order reproduced herein above, is self speaking. The witnesses sought to be examined are none other than whose police statements have already been supplied to the petitioner. The witnesses may give evidence consistent with their statement recorded under Section 161 Cr.P.C. The appellant would have every opportunity to cross examine these witnesses. The trial Court would appreciate entire evidence in the case before delivering the judgment.

7. The facts of *Shiv Kumar Yadav's* case (supra) indicate that the witnesses were sought to be re-examined in exercise of power under Section 311 Cr.P.C., since the defence counsel was not competent and had not effectively cross examined the witnesses, having regard to the facts and circumstances of the case.

8. Such is not the case herein. The trial Court in the facts and circumstances of the case has proposed to examine five more

witnesses in the case. The petitioner would have an opportunity to cross examine them. The witnesses sought to be examined, are none other than those cited by the prosecution in the charge-sheet.

9. In this factual backdrop, this Court is of the view that no interference is warranted with the impugned order. The writ petition therefore fails. The same is thus, dismissed.

[R. G. AVACHAT, J.]

SMS