

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

CRIMINAL WRIT PETITION NO. 417 OF 2022

Sadashiv Rangnath Rajmane
and Another

..PETITIONERS

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. Ajinkya Kale, Advocate h/f Talekar and Associates for petitioners
Mrs. G.L. Deshpande, A.P.P. for respondent no.1 - State

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**CORAM : R.G. AVACHAT, J.
DATED : 06th APRIL, 2022**

PER COURT :

1. Heard.
2. The challenge in this petition is to the order dated 25th February, 2022 passed by the learned Additional Sessions Judge, Gangakhed in Criminal Revision Application No. 12 of 2009. Vide the impugned order, application (Exh.43) moved by the prosecution for production of final medico-legal certificate and issuance of witness summons to the doctor concerned in proof of the said certificate, came to be allowed.
3. Learned counsel for the petitioner would submit that recording of the evidence in the case was over. The matter was fixed for arguments. The final medico-legal certificate was not part and parcel of the charge-sheet. The

prosecution would not be allowed to fill up the lacuna in the investigation. In support of his claim, the learned counsel relied on the judgment of this Court in the case of ***Fateshsinh Mohansinh Chauhan and Ors. Vs. Union Territory of Dadra and Nagar Haveli, 2003 (4) Mh.L.J. 73***, as under :-

“The lacuna is not something which is through oversight in the management of the prosecution or inadvertence with which proper evidence was not adduced where in such cases the Court is expected to be magnanimous in permitting such mistakes or inadvertence. The lacuna in the prosecution case has a meaning of inherent weakness in the prosecution case. The prosecution case is one which is submitted along with the charge-sheet. If such lacuna is left at the level of the filing of charge-sheet, that means if there is any lacuna in the investigation, that lacuna cannot be overcome by the prosecution during the course of trial or by taking recourse to the provisions of section 311 of Criminal Procedure Code.”

4. The learned A.P.P. would, on the other hand, relied on the judgment of the Apex Court in the case of ***V.N. Patil Vs. K. Natarajan Kumar and Ors.*** in ***Criminal Appeal No. 267 of 2021*** as :-

“18. The aim of every Court is to discover the truth. Section 311 of Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.”

5. The petitioners herein are the accused in Regular Criminal Case No. 87 of 2018. They are alleged to have caused grievous hurt to the complainant. No final medico-legal certificate was collected by the investigating officer. The medical officer at Sonpeth had issued a provisional medico-legal certificate to the investigating officer. As such, it was lapse on the part of the investigating officer to collect final medico-legal certificate and file it alongwith charge-sheet. What has been sought by the prosecution was issuance of summons to the medical officer for production of such certificate and his examination in proof thereof. The petitioners would have every opportunity to traverse the prosecution case on production of final medico-legal certificate and examination of the proposed witnesses.

6. This Court finds the order of learned Additional Sessions Judge to be in furtherance of achieving the ends of justice. It is reiterated that the petitioners would have every opportunity to traverse the evidence i.e. sought to be let it by allowing application (Exh.43). As such, this Court finds no merits in the present criminal writ petition. Hence dismissed.

(R.G. AVACHAT, J.)

SSD