

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

**CRIMINAL REVISION APPLICATION NO.174 OF 2022**

Dattatray Popatrao Patil and Others ...Applicants

Versus

The State of Maharashtra ...Respondent

...

Mr. S.G. Ladda, Advocate for the applicants.

Mr. A.A. Jagatkar, APP for the Respondent/State.

...

**CORAM : S.G. MEHARE, J.**

**DATED : 20<sup>th</sup> JUNE, 2022.**

**PER COURT:-**

1. Heard learned counsel for the applicants and learned APP for the State.
2. Issue notice to the respondent. Learned APP waives service of notice for the respondent-State.
3. An order recalling the witness for cross-examination dated 26.04.2022 is under challenge. The brief facts of the case were that the prosecution called one witness, PW-6, namely Dr. Shivkumar Vishwanath Santpure. The learned counsel pointed out to the accused that the witness is deposing by referring to some chits. A request was made to the Court to direct the witness to place those two rough pages on record; however, the Court did not find it relevant to take the said rough pages on record. The Court declined the request of the counsel for the petitioner. After rejecting the request, he stated before

the Court that the petitioner wanted to seek a remedy before the higher Court. Then the Court discharged the witness. But the said order was not challenged.

4.           Thereafter, an application for recalling the witness was made. The said application was also rejected. It is impugned in this application. Learned Sessions Court was pleased to reject the application assigning the reason that the defence intended to challenge the order of this Court, and before the discharge of the witness, the accused did not pray for further cross-examination of the said witness.

5.           After having gone through the impugned order, it reveals that the learned Sessions Court had declined to direct the witness to produce the paper chit. But that order was not challenged. Then an application for recalling the same witness was moved. The learned Sessions Judge, for the reasons mentioned above, declined the request to recall the said witness.

6.           Now, learned counsel Shri S.G. Ladda for the applicants made a statement at the bar that he waives his question put to the witness PW-6 on 29.01.2022 and does not want the said chit on record, and he simply wants to proceed with the matter availing the right to cross-examine the witness.

7.           In these circumstances, it would be appropriate to grant an opportunity to the accused to cross-examine the witness who has

been discharged by the Court to meet the ends of justice. The right to cross-examine the witness is to be protected; hence, the application deserves to be allowed. Therefore, the following order :

**ORDER**

- I) The revision application is allowed.
- II) The impugned order passed by the learned Additional Sessions Judge-4, Aurangabad below Exhibit-123 dated 26.04.2022 in Sessions Case No.215/2013 is quashed and set aside.
- III) The application for recalling the witness (PW-6) is allowed.
- IV) The learned Sessions Court is directed to recall the witness and grant an opportunity to the accused to cross-examine the witness.
- V) Learned counsel for the defendants shall take care that there shall be no adjournment on any count when the witnesses are present in the Court.

**(S.G. MEHARE, J.)**