

GRM

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

**CRIMINAL WRIT PETITION NO. 3256 OF 2022**

Subhashchandra Bhagwanrao Pawar ... Petitioner

**V/s.**

The State of Maharashtra & Ors. ... Respondents

Mr. Anant Vadgaonkar, Adv. for the Petitioner.

Mr. A. R. Patil, APP for the State/Respondent No. 1.

Mr. Shashank C. Mangle, Adv. for Respondent No. 2.

Mr. Kunal Patil a/w Mr. Prashant Raut, Adv. For  
Respondent Nos. 3 & 4.

**CORAM : AMIT BORKAR, J.**

**DATED : NOVEMBER 21, 2022**

**P.C.:**

1. By the impugned order dated 20<sup>th</sup> September, 2021 passed by the learned Additional Chief Judicial Magistrate, Kolhapur, the application at Exhibit-130 dated 6<sup>th</sup> August, 2021 filed by the prosecution under Section 311 of Code of Criminal Procedure, 1973, has been partly allowed.

2. The prosecution was instituted against the accused persons/respondent nos. 2 to 4 for the offence under Sections 420, 467, 468 & 471 r/w 34 of Indian Penal Code, 1860. The learned Additional Chief Judicial Magistrate, Kolhapur confirmed the charges in the year 2016 and thereafter, the examination of informant was recorded. After examination of seven witnesses, the informant/petitioner applied before the learned Additional Chief

Judicial Magistrate, Kolhapur to conduct prosecution in person. On 25<sup>th</sup> March, 2021, the evidence of prosecution was closed.

3. The petitioner, therefore, on 6<sup>th</sup> August, 2021 sought examination of witnesses mentioned in the application at Exhibit-130. The learned Additional Chief Judicial Magistrate, Kolhapur has treated the application under Section 311 of Code of Criminal Procedure, 1973 and partly allowed it granting permission to examine two witnesses i.e. the investigating officers viz. N. S. Mane and P. S. Gaikwad and rest of the part of application was rejected. The revision filed against the said order has been dismissed by the learned Additional Sessions Judge, Kolhapur vide order dated 14<sup>th</sup> February, 2022 and thereafter, the present petition has been filed by the petitioner.

4. Having heard the learned Advocates for both the parties, it appears that in so far as witnesses, as stated in paragraph nos. 2 & 3 of the application at Exhibit-130, PW-8 Mr. Tivale had been examined by the prosecution, but he turned hostile. The rest of the witnesses were not examined earlier by the prosecution. Though the objection is raised that after recording the statement of accused under Section 313 of Code of Criminal Procedure, 1973, such exercise of examining witnesses on behalf of prosecution can not be allowed, in my opinion, in the interest of justice and considering the fact that the witnesses were not examined earlier by the prosecution, permission to examine witnesses at paragraph nos. 2 & 3 of the application at Exhibit-130 dated 6<sup>th</sup> August, 2021, deserves to be granted.

5. The delay caused in conducting the trial due to pendency of the present petition can be compensated by directing the learned Additional Chief Judicial Magistrate, Kolhapur to decide the main proceeding within two months from the date of performance of parties i.e. 31<sup>st</sup> January, 2023. I, therefore, pass the following order :-

a. The order below Exhibit 1 dated 10<sup>th</sup> August, 2022 in application at Exhibit-130 passed by learned Chief Judicial Magistrate, Kolhapur, mainly in Regular Criminal Case No. 446 of 2012 pending before the learned Additional Chief Judicial Magistrate, Kolhapur, is quashed and set aside to the extent of refusal to permit prosecution to examine witnesses at paragraph nos. 2 & 3 of the application at Exhibit-130. The application at Exhibit-130 to the extent of paragraph nos. 2 & 3 stands allowed.

b. **Rule** is made absolute in above terms. No costs.

c. In case the witnesses fail to remain present, it would be open to the learned Additional Chief Judicial Magistrate, Kolhapur to pass appropriate orders.

(AMIT BORKAR, J.)