

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.412 OF 2022

Petitioner : **Vishwanath Laxman Chavhan,**
Aged about 30 years, Occupation: Agriculturist,
R/o Sasti, Tahsil Patur, District Akola.

– Versus –

Respondent : **The State of Maharashtra,**
through its Police Station Officer,
Police Station – Channi, Tahsil Patur,
District Akola.

Mr. Abdul Subhan, Advocate for the Petitioner

Mr. S.M. Ukey, A.P.P. for the Respondent.

CORAM : **VINAY JOSHI, J.**

DATE : **15th JULY, 2022.**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of both sides.

02] The petitioner has challenged the order dated 10/12/2021 passed by the trial Court refusing to recall prosecution witness. It is argued that though the prosecution witness PW-1-victim was cross-examined, however, there were several deficiencies. The accused had changed his Counsel, on which it was noted that there was no cross-examination on vital points like

delay, conduct, enmity and some other aspects. Therefore, the petitioner-accused applied to the trial Court for recall of witnesses in terms of Section 311 of the Code of Criminal Procedure, which was rejected. The State opposed the petition by stating that victim was already cross-examined at length and change of Advocate cannot be a ground for recall.

03] The petitioner is facing prosecution for the offence punishable under Sections 354, 376 and 323 of the Indian Penal Code. The victim is a grownup lady aged 26 years. The prosecution has led her evidence as PW-1 on 30/04/2019. On the same day, the erstwhile Advocate engaged by the petitioner/accused has cross-examined the witness. It reveals from the note-sheet that though the first witness, i.e. the victim, was examined on 30/04/2019, there was no progress in the trial for next two years. After change of Advocate, the accused/petitioner has applied for recall vide application (Exh.44), dated 08/09/2021, which came to be rejected.

04] The petitioner's learned Counsel has produced copy of Roznama as well as took instructions to contend that till date, no further witnesses have been examined in the trial. Certainly, if there has been any progress in the trial in the shape of examining some more witnesses, then the position would have been different. However, the trial is standstill from the stage when the victim was cross-examined. The petitioner's learned Counsel took me through

the evidence of the victim to impress that there was no cross-examination on the points as aforesaid mentioned. Since, there is no progress in the trial, there would be no prejudice to the prosecution if the witness is recalled. The right of fair trial is an essential feature of the criminal trial. Needless to state that the cross-examination is the only way available for accused to test the veracity of the prosecution witness. The Court has wide powers under Section 311 of the Code to recall a witness at any stage if found to be essential for the just decision of the case. Having regard to the said fact, the petitioner has made out a ground for recall of prosecution witnesses namely PW-1 victim.

05] In that view of the matter, the petition is allowed. The impugned order dated 10/12/2021 is hereby quashed and set aside. The petitioner is permitted to cross-examine the witness i.e. PW-1 victim. The learned trial Court shall recall the victim for cross-examination. The petitioner shall cross-examine the witness on the date of her appearance without seeking any adjournment. In case the petitioner fails to conduct the cross-examination on the assigned date, his right to cross-examination would stand forfeited. The petition stands disposed of. Rule is made absolute in the above terms.

(VINAY JOSHI, J.)

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