

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

14 CRIMINAL WRIT PETITION NO.249 OF 2023

MAYURI W/O. SAURABH YELURKAR
VERSUS
SAURABH SHIVHAR YELURKAR AND OTHERS

...
Advocate for Petitioner : Mr. Subhash V. Mundhe

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CORAM : R. M. JOSHI, J.
DATE : AUGUST 28, 2023

PER COURT :

- . None for the respondents.
2. Heard learned counsel for the petitioner.
3. This petition takes exception to the order dated 03.01.2023 passed by the Judicial Magistrate First Class, Gangakhed below Exh.232 in Criminal Misc. Application No.75 of 2015. The petitioner is the applicant before the learned JMFC. The respondents herein had filed application at Exh.232 for recalling of the applicant for further cross-examination. The said application at Exh.232 shows that except for a vague statement that in the cross-examination of the applicant, some questions have remained to be asked and permission for further cross-examination is sought. The said application was

opposed by the petitioner herein. Learned Trial Court passed the impugned order allowing this application.

4. Perusal of the said order shows that absolutely no reason is recorded for allowing of the application. In paragraph no.5 of the said order, it is mentioned that in order to give opportunity to the respondents application is allowed. No doubt, it is within the powers of the learned JMFC to recall any witness by exercising power u/s. 311 of the Cr.P.C. However, such power cannot be exercised by whim but only when it appears that re-examination/recall of witness is essential for the decision of the case. The Court for the purpose of invoking those powers must consider the facts and circumstances of the case and then to record the reasons before exercising such power. Perusal of application filed before Trial Court shows that, there could not be any more vague application than the one filed by the respondents for recalling the applicant for further cross-examination. Learned Trial Court on drop of hat and without recording any reason and without coming to the conclusion as to the purpose for which cross-examination is essential, proceeded to allow the application. Impugned order since sans any reasoning cannot sustain. Moreover,

respondents have failed to make out any case for recall of Petitioner for further cross-examination.

5. Hence, petition stands allowed. The impugned order is set aside.

[R. M. JOSHI]
JUDGE

GGP