

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

35 CRIMINAL WRIT PETITION NO.320 OF 2023

**DNYANOBA GANGADHAR MUNDHE
VERSUS
THE STATE OF MAHARASHTRA**

Mr.D.S. Patil h/f. Mr. S.S. Gangakhedkar, Advocate for the petitioner.
Mr.P.M. Kulkarni, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 28.04.2023**

PC :-

01. Heard learned Advocate for the petitioner and learned APP for the respondent/State. The petitioner has challenged an order passed by the Additional Sessions Judge, Gangakhed, Dist. Parbhani dated 03.01.2023 rejecting the prayer for recall of witness under section 311 of the Cr.PC. The application and the petition is filed by the original informant. It is stated in the application that the mother of the petitioner, namely, Sojarbai received injuries and she was admitted in the hospital. She was in hospital for four days. However, documents in respect of the said medical report are not collected by the prosecution inspite of persuasion by the petitioner. The informant has brought certified copies i.e. secondary evidence in respect of referral letter and discharge certificate issued by the hospital and prayed that

the injured witness and the Doctor who are already examined, be recalled for further examination. This application was filed by the informant himself under the signature of the Assistant Public Prosecutor. The said application was opposed by the accused stating that there is no reference of this documents.

02. The learned APP for the respondent/State supports the impugned order.

03. The learned Advocate for the petitioner relies upon judgment in the case of Mohanlal Shamji Soni Vs. Union of India & Anr., AIR 1991 SC 1346, wherein the Hon'ble Apex Court has held in paras 18 and 27 that section 540 (Old Code) does not give Court unfetted power, though section gives widest power with regard to stage at which the powers of the Court should be exercised. It is further held that the Court should borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily. To avoid unreasonable results, it is also held that said power is not

to be used for filling up lacuna left by the prosecution. In para 27 of the said judgment the Hon'ble Apex Court has observed that even if the evidence on both sides is closed, the jurisdiction of the Court must obviously be dictated by exigency of the situation and fair play and good sense appears to be the only safe guided and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.

04. There is no dispute as regards proposition and the ratio laid down in the aforesaid judgment. In the said judgment it is held that the power is to be exercised in the facts of the case and should not be exercised to fill up lacuna in the prosecution case. Considering this, this Court examined whether in this case filing application at this stage would amount to only filling of lacuna.

05. The learned Trial Court observed that at the stage of final hearing, no such application needs to be entertained. The matter is old of the year 2015 and the application is filed only to prolong the matter.

06. This Court finds that the evidence of the witness was examined long back. Sojarbai sought to be recalled was examined on 20.10.2018. The Doctor was also examined. The date of examination of the Doctor does not appear in the copy of petition. This Court finds that from 2018 till 2023 for five years no such application was made. If the petitioner was diligent enough, he should have made an attempt when the evidence was going on. Filing such application on the date of argument clearly shows that it is for the purpose of prolonging the matter or at least he was not diligent enough to take proper steps in time.

07. No perversity or illegality is pointed out in the impugned order. This Court finds that no cause is made out to call for interference in the impugned order. The petition stands dismissed.

[KISHORE C. SANT, J.]