

VRJ

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

**WRIT PETITION NO.1510 OF 2023**

|                          |                |
|--------------------------|----------------|
| Sunil Shantaram Bhagwat  | ... Petitioner |
| <b>V/s.</b>              |                |
| The State of Maharashtra | ... Respondent |

Mr. Mahesh Rawool i/by Sahil Ghule for the petitioner.

Mr. Arfan Sait, APP for the respondent/State.

**CORAM : AMIT BORKAR, J.**

**DATED : APRIL 28, 2023**

**P.C.:**

1. The legality and validity of order of the learned Sessions Court in Criminal Revision Application No.18 of 2022, confirming order dated 8<sup>th</sup> April 2022 passed by the learned Trial Court rejecting application to recall auditor and internal auditor in a prosecution initiated by the auditor for misappropriation of amount of cooperative society filed under sections 409, 465, 467, 468 and 471 is the subject matter of present petition. The FIR came to be filed. The FIR alleged misappropriation of amount of Rs.10,71,800/-. The petitioner is the manager of branch who is trite along with directors of cooperative society.

2. The examination-in-chief of witness No.4 was recorded on 11<sup>th</sup> May 2018. Thereafter, examination of other witnesses were

recorded. The examination of witness No.13 was recorded on 7<sup>th</sup> December 2018. The request for adjournment to cross examine witness No.13 was allowed subject to payment of cost of Rs.2,000/-. Thereafter, on subsequent four dates witness No.13 was absent. In the mean time, the advocate for the petitioner passed away due to Covid-19. On 18<sup>th</sup> February 2022, examination of witness no.15 was recorded. On 4<sup>th</sup> March 2022, new advocate for the petitioner filed his appearance and on the next date filed application for cross examination of witness Nos.4 and 13 which is rejected by the impugned order.

3. Considering the facts stated above and considering the nature of prosecution, in my opinion, the application deserves to be allowed particularly in view of judgment of the Apex Court in the case of **Natasha Singh Vs. C.B.I.** reported in 2013 (5) SCC 741. The Apex Court in paragraph Nos.7 and 8 held as under:

“7. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined **if his evidence appears to it, to be essential to the arrival of a just decision of the case.** Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must

satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

- 8.** In **Mir Mohd. Omar & Ors. v. State of West Bengal**, AIR 1989 SC 1785, this Court examined an issue wherein, after the statement of the accused under Section 313 Cr.P.C. had been recorded, the prosecution had filed an application to further examine a witness and the High Court had allowed the same. This Court then held, that once the accused has been examined under Section 313 Cr.P.C., in the event that liberty is given to the prosecution to recall a witness, the same may amount to filling up a lacuna existing in the case of the prosecution and therefore, that such an order was uncalled for.”
- 4.** In a prosecution alleging misappropriation of amount of a cooperative society, the evidence of auditor and internal auditor is relevant. Hence, the petitioner needs to be given opportunity considering the narration of facts referred above.
- 5.** For the reasons stated above, the impugned order cannot be sustained.
- 6.** The rule is made absolute in terms of prayer clause (b).

**(AMIT BORKAR, J.)**