



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

CRIMINAL WRIT PETITION NO. 1067 OF 2024

**YASH KANHAIYLAL BHUREWAL
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Petitioner : Mr. Rahul P. Mote
APP for Respondent : Ms. D. S. Jape
...

**CORAM : S. G. MEHARE, J.
DATE : 14-06-2024**

PER COURT :-

1. Heard the leaned counsel for the petitioner.
2. Issue notice to the respondent. Learned A.P.P. waives service of notice for the respondent.
3. This writ petition is against the order of the learned Sessions Judge-1, Jalna, passed below Exhibit-37 in Sessions Case No.204 of 2003, dated 28.05.2024, rejecting the prayer to recall prosecution witness No.2 to cross-examine on the geographical aspect of the spot of the incident and other relevant matter.
4. Learned Sessions Judge discussed the facts in detail and quoted the number of case laws relied upon by the petitioner.

5. Learned counsel for the petitioner submits that mere change of lawyer is not a ground to reject the prayer. The Court was to examine the object of Section 311 of the Code of Criminal Procedure ("Cr.P.C.", for short) and the grounds mentioned for recalling the witness. Recalling the witness is not a matter of course, but opportunity is to be granted to cross-examine the witnesses on material aspect, that may have effect on the merit of the case. He submits that P.W. No.1 was not completely cross-examined in relation to the spot of the incident. The material fact needs to be brought on record which is having great impact on the trial.

6. Learned A.P.P. has strongly opposed the application. She submits that recalling the witness unnecessarily is harassment. Recalling the witness is not a matter of routine course. There must be a substance. The petitioner must satisfy the Court that there are grounds to recall the witness for further cross-examination.

7. Perused the impugned order.

8. The Court has discussed the cross-examination conducted by the earlier lawyer in relation to the spot of the incident and the procession. However, finally rejected the application on the ground that change of lawyer is not a good ground to exercise power

under Section 311 of the Cr.P.C. He has also discussed various case laws. He discussed the principles regarding recalling of the witness as observed in paragraph No.29 of the case of ***State (NCT) of Delhi vs. Shiv Kumar Yadav, (2016) 2 SCC 202.*** In the said case, the Honourable Supreme Court has enumerated the reasons for disapproving the view of the High Court and enumerated the principles of recalling the witness. One of the principles laid down in the said judgment is, the Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed. Another principle laid down in the said case was mere change of counsel cannot be a ground to recall the witnesses. There shall be no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled.

9. Bearing in mind the principles laid down in the case of ***State of (N.C.T.) Delhi (supra)***, the application should be read as a whole, though mere change of the lawyer is a ground to recall the witness. The reasons for recalling the witness should not be ignored. The applicant has a specific case that few material facts are required to be brought on record, which is having the direct effect on the aforesaid veracity with the prosecution case. He wanted to bring geographical situation of the spot of the incident to disprove the allegations against him. Though, it has been

pleaded that earlier counsel did not cross-examine the witness in detail, the reasons have been mentioned for recalling the witness. The reasons mentioned for recalling the witness appear just and proper. The applicant is facing trial for serious offence of murder. If the opportunity is granted, no harm would be caused to the prosecution. However, such evidence may help the Court to arrive at a proper conclusion. The Court is satisfied with the reasons for recalling the witness. Therefore, P.W. No.1 should be recalled for further cross-examination. Hence, the following order :-

ORDER

- i) The criminal writ petition stands allowed.
- ii) The impugned order of learned Additional Sessions Judge-1, Jalna, passed below Exhibit-37 in Sessions Case No.204 of 2023, dated 28.05.2024, is quashed and set aside.
- iii) Application Exhibit-37 is allowed.
- iv) It is made clear that the applicant shall not travel beyond the reasons mentioned in the application, during the cross-examination of P.W.No.1.

(S. G. MEHARE)
JUDGE