



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

**CRIMINAL WRIT PETITION NO.887 OF 2023**

Dinesh S/o Ramdeo Shahu Vs. State of Maharashtra and others

---

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.

Court's or Judge's orders.

---

Ms Parita Lakhani, Advocate for petitioner.  
Shri N.B. Jawade, APP for respondent no.1/State.

**CORAM : M.W. CHANDWANI, J.**

**DATE : JANUARY 02, 2024.**

Heard.

2. The order dated 05.09.2023 of learned Judicial Magistrate First Class, Court No.10, Nagpur is under challenge by way of this writ petition, whereby the learned Magistrate allowed the application of prosecution to examine the witnesses.

3. It is contended that the petitioner was acquitted by the learned Magistrate. On the appeal preferred by the victims, the appellate Court partly allowed the appeal and remanded the matter back to the trial Court for recording the evidence afresh of remaining witnesses, whose evidence was not recorded earlier. It is contention of the learned counsel for the petitioner that after remand of the matter the learned Magistrate issued summons to the witnesses. Due to non appearance of the witnesses, the Court proceeded to record the statement of the appellant under Section 313 of the Code of Criminal Procedure (Cr.P.C.). When the matter was

posted for arguments, the application Exhibits 38, 38A, 38B came to be filed by the prosecution for issuing summons to the eye witnesses Sumitra Wankhede and to the experts Dr. Ashish Wankhede and Dr. S.M. Kelkar, which came to be allowed by the impugned order. Feeling aggrieved with the said order, the present petition came to be filed.

4. The main contention of the learned counsel for the petitioner is that once the Magistrate proceeded ahead there was no reason for again going back to the stage of evidence. Therefore, order of Magistrate does not sustain and hence the petitioner invokes writ jurisdiction.

5. Needless to mention that appellate Court vide order dated 22.11.2017 while remanding the matter to the trial Court, directed trial Court for recording the evidence afresh of the remaining witnesses whose evidence was not recorded earlier. It is also matter of record that the said order is also challenged by way of Writ Petition No.810/2023, which came to be withdrawn on asking by the Court to satisfy over maintainability of the petition.

6. It appears that after remand of the matter, though summons were served to the expert witnesses who were already in the list of witnesses but, they were not found, and summons to Sumitra Wankhede who was not shown in the list of witnesses, was not issued. Thus, summons were not served to all these three witnesses who were to be examined

has hold by the appellate Court therefore though matter was fixed for statement under section 313 of the Cr.P.C. but since summons were not served to those three witnesses no fault can be seen in the order of learned Magistrate for issuing summons to these witnesses by allowing the application Exh.38, 38A, 38B even after case was fixed for recording the statement of the petitioner.

7. The petition is sans merits. At this stage, learned counsel for the petitioner submits that since the matter is old one the learned trial Court be directed to dispose of the matter at the earliest.

8. Considering this statement, the trial Court is directed to dispose of the matter within two months from the date of receipt of this order.

9. In view of above, the petition stands dismissed.

**JUDGE**

*Wagh*