



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 19 OF 2025

Gajanan S/o. Madhavrao Renge,
Age : 50 years, Occu. : Agriculture,
R/o. Itlapur (Deshmukh),
Taluka and District Parbhani.

... Applicant

Versus

The State of Maharashtra,
(Through Daithana Police Station,
Taluka and District Parbhani

... Respondent

.....
Mr. Prashant P. Giri, Advocate for Applicant.
Mr. N. D. Batule, APP for Respondent - State.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24 JANUARY 2025

PRONOUNCED ON : 28 JANUARY 2025

JUDGMENT :

1. Present revisionist, an under trial, takes exception to order dated 22.11.2024 passed by learned Additional Sessions Judge, Parbhani on Exh.48 in Sessions Case No. 20 of 2023, rejecting prayers to exercise powers under section 231(2) of Cr.P.C., i.e. to defer cross-examination of witness.

2. Learned counsel would submit that, present revisionist is facing trial for commission of offence under sections 302, 324, 323, 504 and 506 read with 34 of Indian Penal Code, at the hands of

learned Additional Sessions Judge, Parbhani. It is pointed out that, prosecution opened its case and PW1 informant is already made to step into witness box. Cross examination though conducted, it has not been concluded yet. He would submit that, along with PW1, according to prosecution, his grandfather, namely, Madhav Renge was also present at the scene of occurrence and he is also a star witness of prosecution, but, is yet to be examined. That, no suggestions whatsoever have yet been put to the PW1. Both PW1 and his grandfather are crucial witnesses for both, prosecution as well as defence. That, accused does not want to open his defence at this stage i.e. till all prosecution's star witnesses are examined and according to learned counsel, accused has right to do so. That, if he completes cross and gives suggestions, then subsequent witnesses who are yet to be examined, will know about probable defence of accused and as such, they are likely to tailor their evidence and thereby frustrate defence of accused.

3. Learned counsel pointed to section 231(2) of Cr.P.C. and according to him, said provision particularly contemplates such situation, whereby defence can request deferral of cross of witnesses and to conduct cross later on and an accused can withhold his probable defence till then. According to learned counsel, legislature has specifically provided for such situation and trial court can

postpone cross, more particularly in the interest of fair trial, and as such application below Exh.48 was tendered praying for deferral of cross till other witnesses are examined by prosecution. However, according to him, learned trial Judge failed to consider and appreciate the very purport and intent of above provision and without assigning sound reasons rejected the application.

4. Learned counsel further pointed out that, there is no dispute that prosecution has right to decide the course of examination of witnesses and even there is discretion bestowed with trial Judge to permit deferral or not. However, learned counsel emphasized that in view of above provision and in view of the law to this extent expounded by the Hon'ble Apex Court in the case of ***State of Kerala v. Rasheed*** reported in ***(2019) 13 SCC 279***, above quoted provision has been duly acknowledged. Learned counsel invited attention of the court to para 20 wherein circumstances necessitating deferral are enumerated by the Hon'ble Apex Court and according to him, such two circumstances amongst it, i.e. when witnesses are related to each other and are supposed to depose on same subject matter and secondly when they are about to depose on same set of facts are identical in his case too, and therefore above provision deserves to be invoked.

5. He further pointed out that, even guidelines have been laid down by the Hon'ble Apex Court in the very same judgment. Resultantly, it is his submission that, when statute itself provides for such exigency, learned trial court was expected to exercise its discretion judiciously. Here, it has not so happened and learned trial Judge has straightway turned down the application Exh.48. That, deferral of cross is in the very interest of defence. He pointed out that, accused cannot be made to open his defence, as there is every possibility of subsequent witnesses, who are in pipeline and who are yet to be examined by prosecution getting alert and tailoring their answers in cross-examination to defeat the probable defence thereby jeopardizing the rights of accused.

6. Learned counsel also took this court through the judgment of Hon'ble Gujrat High Court in the case of ***Gitesh Ghanshyambhai Raval v. State of Gujarat and Anr.*** in Criminal Revision Application No. 514 of 2019 as well as ruling of Hon'ble Apex court in the case of ***P. Sanjeeva Rao v. State of Andhra Pradesh*** reported in ***(2012) 7 SCC 56***.

7. While answering the above revision, learned APP at the threshold objected to the very maintainability of revision as,

according to him, such powers can only be exercised in a writ jurisdiction and not under revisional jurisdiction. *Secondly*, he submitted that, defence has no right to seek deferral and that it is entire prerogative of prosecution as to which witness should be examined when and in what chronology. He also invited attention of this court to the judgment of this court in Criminal Writ Petition No.677 of 2018 in the case of ***The State of Maharashtra v. Murlidhar Mansaram Sapkale and Ors.***, whereby according to him, similar prayers were turned down by this court. For such reasons, he opposes present revision.

8. Heard both sides at length. What seems to be pinching the revisionist, is refusal by learned trial court to defer cross of prosecution witnesses. Thrust of argument of learned counsel is section 231(2) of Cr.P.C. For proper comprehension, the provision is reproduced as under :-

“231(1) xxxxx.

(2) *The Judge may, in his discretion, permit the cross-examination of **any witness** to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”*

9. Admittedly, learned Additional Sessions Judge, Parbhani is conducting Sessions Case No. 20 of 2023 and prosecution has

already opened its evidence. Here, case set up by revisionist is that, prosecution in support of its case has examined informant, alleged injured witness. That, examination-in-chief is over. Now, if such witness and other witness proposed to be examined on same point are made to depose, accused can set up his defence to both such witness at one and the same time. Hence, accused wants grandfather of PW1, who was said to be present at the scene of occurrence, also to be made to step into witness box. So that, both these witness can be cross examined wherein accused would set up his defence. With such intentions, revisionist accused has tendered application Exh.48 with following prayers :-

“Therefore, the applicants humbly pray that, this application may kindly be allowed and further cross-examination of the “first informant” may kindly be deferred until the prosecution examines the witness Madhav Limbaji Renge and obliged.”

10. Above quoted provision which is now sought to be invoked, undisputedly permits accused to tender application praying for deferral of cross examination of prosecution witnesses. The very legislative intent of this provision is to provide fair trial and accused cannot be compelled to open his defence and rather he can reserve the same till proposed prosecution witnesses are examined. The underlying idea is, as stated above, fair trial and fair opportunity. It

is equally acceptable that when defence of accused is known to the prosecution witnesses, there is every likelihood of witness tailoring their evidence to frustrate and defeat the probable defence of accused. To avert such situation, above section has been incorporated.

However, law is also fairly settled that, chronology of examination of prosecution witnesses is in the exclusive domain and province of prosecution. Trial court also has undoubted discretion whether to invoke section 231(2) Cr.P.C. or not, but, again such discretion is expected to be exercised judiciously.

11. The ruling of Hon'ble Apex Court in the case of ***State of Kerala (Supra)***, which is an instructive judgment, has elucidated the principles and guidelines to be followed by trial courts when above provision has been invoked. The two circumstances projected by learned defence counsel which are said to be available in his case, in trial court do find place in the above judgment as possible circumstances which are required to be considered by learned trial judge while allowing or rejecting exercise of powers under section 231 Cr.P.C.. However, what is of significance and is also pertinent to note is, here, papers show that after examination-in-chief of PW1 Rameshwar was conducted and completed by prosecution on

05.04.2024 itself, on oral request of counsel for accused, cross-examination was deferred till 14.10.2024 i.e. after almost 10 days, and thereafter on 22.11.2024, learned counsel for accused commenced cross-examination from para 13 onwards till para 29 and thereafter, application Exhibit 48 has been pressed into service at around 5.15 p.m. on 22.11.2024. Thus, what is emerging is that, already cross-examination of PW1 had commenced and progressed extensively for 17 paragraphs.

12. Thereafter, Exhibit 48 for deferral of cross of PW1 has been moved. This situation is definitely not contemplated in above provision. Now, having cross-examined informant at length, it is now not open for accused to abandon further cross and put up prayers to the trial court to summon other witnesses. Had the cross of PW1 not commenced at all, situation would have been different. On carefully going through the wordings incorporated in section 231(2) Cr.P.C., deferral of subsequent witnesses in pipeline could at the most be postponed by the learned trial Judge by exercising its discretion. Above quoted provision does not contemplate deferral of cross of a witness, who is already in the process of cross-examination at the hands of defence.

13. The provision “any witness”, in the considered opinion of this Court, only provides for subsequent witnesses, which are yet to be examined and not the one who is facing cross in witness box. Here, as stated above, cross of PW1 is not yet concluded. Once an accused chooses to proceed to cross examine a particular witness, in view of scheme of trial, as provided under section 309 of Cr.P.C., it is bounden duty of cross examiner to first conclude the cross examination of a witness already under examination. Resultantly, no fault can be found in the order of rejection of Exh.48 by the learned trial Judge.

14. Consequently, the above arguments advanced before this court that, discretion has not been exercised judiciously and is against settled principles, has no force. The learned counsel for revisionist is misconstruing the provisions laid down in clause (2) to mean that, cross of even an witness in the witness box can be paused and then prosecution be directed to summon subsequent witnesses which are yet to be examined. Such preposition is not in line with the scheme and layout of Chapter X the Indian Evidence Act which provides for order/chronology examination of witnesses. In fact, Section 309 of Cr.P.C. contemplates day to day trial.

15. In the light of above discussion, unless accused completes cross of PW1, it is not open for such accused to invoke Section 231(2) and pray for deferral of cross of PW1. Taking the above discussion into consideration, there is no infirmity or illegality on the part of learned trial Judge in refusing to defer. Hence, following order is passed:

ORDER

The revision application stands rejected.

(ABHAY S. WAGHWASE, J.)