



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

CRIMINAL WRIT PETITION NO. 225 OF 2025

PIYU POPAT DAWALSE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Petitioner : Mr. Suniket A. Kulkarni
APP for Respondent No.1 : Ms. M. N. Ghanekar
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 23-09-2025

PER COURT:-

1. Heard.
2. The petitioner/accused, in Sessions Case No.87 of 2018, has raised an exception to the order dated 13.12.2024 rendered by the learned Additional Sessions Judge, Dhule, rejecting the prayer for recall of informant for further cross-examination.
3. The learned counsel for the petitioner submits that after the closure of evidence by the prosecution witnesses, the trial Court examined three additional witnesses. As such, it is necessary for the accused to further cross-examine the informant. Hence, it is prayed to allow the petition.
4. Per contra, the learned A.P.P. has supported the order under challenge and submits that this is an attempt to fill up the lacuna by the defence. Therefore, it is prayed for dismissal of the petition.
5. Perusal of the record indicates that the prosecution and the defence witnesses were examined and eventually the evidence

was closed. When the matter was posted for final hearing, the accused sought re-call of witness/informant. Although, the petitioner had sufficient opportunity to cross-examine the informant.

6. At this juncture, it is necessary to reproduce the principles reiterated by the Honourable Apex Court in the case of ***Neha Begum and others vs. The State of Assam and another, Petition for Special Leave to Appeal (Crl.) No.3910 of 2024, dated 02.09.2024,***

“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

“17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the

facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

7. Since the request of the petitioner does not satisfy any of the aforestated principles laid down by the Honourable Apex Court. Resultantly, the Sessions Court justified, while rejecting the prayer of the petitioner. No case is made out by the petitioner in the light of the above principles. Moreover, the petitioner has already availed the right to cross-examine the informant. Only on account of examination of additional witnesses by the prosecution, itself does not give rise to a right to recall of the witness. The application for recall of witness is an attempt to fill the lacuna and the same cannot be permitted. Resultantly, the petition sans merit. No error is noted in the order under challenge.

8. Accordingly, the criminal writ petition is dismissed.

[SACHIN S. DESHMUKH]
JUDGE