



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 522 OF 2025

1. Rajeshwar Vaijnath Buke
Age: 60 years, Occu.: Chairman,
R/o Saibaba Sugar Factory Shivni (Bu.)
Tq. Ausa, Dist. Latur

2. Someshwar Laxmanrao Bhosale
Age: 54 years, Occu.: Service,
R/o Shvini (Bu.), Tq. Ausa,
Dist. Latur

..PETITIONERS

VERSUS

1. State of Maharashtra
Through Police Station Nilanga,
Nilanga, Dist. Latur

2. Kalappa Yasgwantappa Birajdar
Age: 70 years, Occu.: Business & Agri.,
R/o Bank Colony Road, Nilanga,
Tq. Nilanga, Dist. Latur

..RESPONDENTS

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Mr. F.K. Patel, Advocate h/f Mr. J.V. Patil, Advocate for petitioners
Mr. S.S. Dande, A.P.P. for respondent no.1 – State
Mr. C.J. Sabnis, Advocate for respondent no.2
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CORAM : ABHAY J. MANTRI, J.
DATE : 11th DECEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally with the consent of learned counsel for the parties, at the admission stage.
2. The petitioners, being aggrieved by the order dated 11th February, 2025 passed by the 2nd Judicial Magistrate First Class, Nilanga (for short, '**the**

Magistrate below Exh.215 and 217 in R.C.C. No. 272 of 2012, whereby the learned Magistrate permitted the applicant to recall the complainant for further evidence and produce the documents, and therefore, has preferred this petition.

3. Learned counsel for the petitioners vehemently contended that the evidence in the present case has been concluded. The statement of the accused, under Section 313 of the Code of Criminal Procedure (for short, '*Cr.PC.*'), has been recorded by the Court, and therefore, allowing the application filed by the respondent caused prejudice to the rights of the petitioners. Consequently, he submitted that the said order is liable to be quashed and set aside.

4. He further drew my attention to the cross-examination of the complainant, wherein the complainant had deposed that while lodging the complaint, he had handed over all the documents to the police. Therefore, the question also does not arise to permit the complainant to produce the document. Similarly, he argued that those documents are neither part of the charge-sheet nor produced before the Court while recording the evidence of the witnesses. Therefore, it would not be proper to permit the complainant to produce them on record. Hence, he urged that the petition be allowed.

5. On the other hand, learned counsel for Respondent No.2 has strongly opposed the petition and contended that the passing of the order by the learned Magistrate is just and proper and no interference is required in it.

He further submitted that if the respondent no.2 is permitted to produce the documents and adduce further evidence, it would not cause prejudice to the right of the accused persons. Still, the accused persons would get an opportunity to cross-examine him, and therefore, he urged that the petition be dismissed.

6. Having heard learned counsel for both the parties and gone through the record, at the outset, it appears that the evidence of prosecution is closed and the learned Magistrate has examined the accused under Section 313 of the Cr.P.C. on 11th October, 2024. It also appears that, in his statement under Section 313 of the Cr.P.C., the accused stated that the complainant had collected the amount from the farmers but had not paid him. Therefore, the complainant moved the application for production of the said documents and to permit him to adduce further evidence.

7. On the last date, Respondent No.2 was directed to produce those documents before the Court. Pursuant to the same, he has produced the documents. On perusal of the same, prima facie, it does not appear how those documents are relevant to the case in hand. Mere signature of the accused on the said documents is not sufficient. Similarly, it seems that, during his cross-examination, the complainant categorically deposed that, at the time of filing the complaint, he handed over all the documents to the Investigating Officer. Likewise, those documents are not part of the charge-sheet, nor has the witness deposed about the said documents, and therefore, in my view,

passing of the order by the learned Magistrate for permitting the complainant to produce the document on record and lead additional evidence in that regard, certainly would cause prejudice to the rights of the accused persons.

8. In addition, the learned Magistrate has observed that any party can examine any person at any stage. However, the said observation appears to be contrary to the mandate in Section 311 of the Cr.PC. Still, it is the prerogative of the Court to recall any witness or any person already examined, if his evidence appears to be essential to the just decision of the case. However, prima facie, on perusal of the documents, I am of the view that passing of the order by the learned Magistrate is manifestly illegal and perverse, and the same cannot be sustained in the eyes of law.

9. As a result, the petition is allowed in terms of the prayer clause (A). Accordingly, the impugned orderS dated 11th February, 2025, passed below Exhs. 215 and 217 in R.C.C. No. 272 of 2012 by the 2nd Judicial Magistrate First Class, Nilanga, are hereby quashed and set aside. Inform the learned Magistrate accordingly. Rule is made absolute. No order as to costs.

(ABHAY J. MANTRI, J.)

SSD