



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 540 OF 2025

1. Vilas Vitthalrao Patil
 2. Udaysinha Vitthalrao Patil
 3. Vitthalrao Govindrao Patil
 4. Vijaya Vitthalrao Patil
 5. Shubhangi Udaysinha Patil
-Petitioners

Versus

The State of Maharashtra

....Respondent

...

Advocate for Petitioners : Mr. Salunke Sudarshan J.

APP for Respondent : Mr. S.S. Dande

...

CORAM : ABHAY J. MANTRI, J.

DATE : 07th NOVEMBER, 2025

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith and heard finally by the consent of the learned Advocates for the respective parties. Perused the impugned order and record.

2. The original accused persons, being aggrieved by the order dated 21.03.2025, passed by the learned Additional Sessions Judge, Udgir, thereby allowed the applications exhibit 159 and 162, and

permitted the prosecution to re-examine the informant/witness Govind Annarao Patil.

3. At the outset, it appears that the prosecution examined informant/witness Govind as PW. 1, whose examination was concluded on 17.08.2023. During his cross-examination, he made certain admissions in paragraph 7. Consequently, on 17.08.2023, the prosecution filed applications to re-examine the witness, as the witness had not admitted the content of the documents during cross-examination. However, the Court has recorded that the witness has admitted to the content of the documents and, therefore, exhibited them, also mentioning the date of the bond. Thus, the prosecution has filed applications to recall the witness. However, on perusal of the order, it appears that the learned Judge, while allowing these applications, has observed that *“the inconsistency appears in the version of the witness during his examination-in-chief and the cross-examination in respect of the allegation mentioned above, i.e. documents exhibited at exhibit no. 125, i.e. affidavit on bond and the examination-in-chief of the witness, and, therefore, to remove the said inconsistency, the learned Additional Sessions Judge allowed these applications.”*

4. It is pertinent to note that on 27.03.2023, during cross-examination, witness Govind categorically admitted that *“the stamp*

bears his signature and thumb impression and the contents of the said stamp are true and correct. He also admitted the signature and thumb impression of his brother-in-law, Anirudha Patil. Therefore, the said document was marked as Exhibit 125.” It further appears that his evidence was concluded on 17.08.2023, and the learned Additional Sessions Judge observed that R.O. and A.C./Before me, i.e. “**Read Over and Accepted as Correct,**” and, thereafter, learned APP moved the applications.

5. In the applications, it was contended that the learned Judge, during the recording of evidence of informant Govind, had observed that “*the contents of the bond are correct and had incorrectly marked Exhibit 12 to the said bond*”. However, the learned Judge has not given any finding on the same, but observed that “*to remove the inconsistency that appears in the cross-examination of the witness Govind, he has permitted the re-examination of the witness.*” In fact, as per the settled positions of law that ‘re-examination is permitted to remove the ambiguity arising during the cross-examination and not to remove the admissions given by the witness which the learned Advocate for the accused has brought on record. Similarly, it is the settled position of law that re-examination cannot be sought and allowed solely for the purpose of giving the witness an opportunity to clarify the effect of the

statements made during cross-examination. Moreover, it is not permissible to recall the witness to fill up the lacuna that was brought on record during the cross-examination by permitting the re-examination of the witness.

6. Learned Advocate for the petitioners has taken me through paragraph no. 7 of the evidence of the witness Govind, which was recorded in English and Marathi languages, and submitted that during the cross-examination, simple questions were put to the witness about “whether he had signed the said document and whether the contents of the document were true and correct, and he answered in the affirmative. Therefore, he submitted that no ambiguity arose during the cross-examination, but the witness had given an admission to the question put to him. Consequently, he submitted that the re-examination is not permissible to wipe out the admission given by the witness during the cross-examination. In support of his contention, he has relied on the following judgments :

- i. *Rajaram Prasad Yadav Versus State of Bihar and another, AIR 2013 SCC 3081;*
- ii. *Simrin Singh Versus Amrit Srinivasan and another, 2018 SCC OnLine Del 7177;*
- iii. *Capitol Art House (P) LTD Versus Neha Datta, AIROnline 2022 Del 235.*

7. He has drawn my attention to Paragraph 14 of *Rajaram*

Prasad Yadav (supra), which reads thus :

"14. A conspicuous reading of Section 311 Cr.PC. would show that the widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a prefix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act prescribes the order of examination of a witness in Court. Order of re-examination is also prescribed, calling for such a witness, as desired for such re-examination. Therefore, a reading of Section 311 Cr.PC. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.PC. It is, therefore, imperative that the invocation of Section 311 Cr.PC. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. **The power vested under the said provision is made available to any Court at any stage in any inquiry or trial, or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as a witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just a decision, and for that purpose, the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.**"

8. Paragraph no. 11 of **Simrin Singh** (supra), which reads thus :

"11. The words 'explanation of matters referred to in cross-examination' in Section 138 supra, in my view, have to be interpreted as re-examination confined to explanation of the sense and meaning of the expressions used by the witness in cross-examination, if they be in themselves doubtful and also the motive by which the witness was induced to use those expressions. Re-examination, in my view, cannot go further than that. I reiterate that re-examination cannot be sought and allowed, with the sole object of giving a chance to the witness to undo the effect of statements earlier made in cross-examination. Lacunae in evidence led cannot be filled up under the pretext of re-examination."

9. Paragraph nos. 15 to 17 of *Capitol Art House (P) LTD* (supra), which read thus :

"15. In the guise of re-examination, the counsel for the defendant cannot ask the witness to give further explanation to the answers given by her. There is no ambiguity in the answers given by the witness that requires explanation through re-examination. In the present case, the witness, who is a law graduate, has consciously chosen to give her answers in 'yes' or 'no' without giving any explanation in support thereof.

16. Needless to state that any interpretation in respect of the answers given by the witness can be addressed by the counsels at the time of making submissions. Re-examination cannot be used to give a chance to the witness to undo the statement of the witness made in cross-examination and fill in the lacunae in evidence.

17. Therefore, in the facts and circumstances of the case, this Court is of the view that no case for re-examination is made out."

10. As such, he submitted that in view of the law laid down by the Hon'ble Apex Court, it is not permissible to call the witness for re-examination to give a chance to the witness to undo his statement made in cross-examination and to fill up the lacuna that came on record during the cross-examination.

11. *Per contra*, learned APP vehemently resisted the petition

and contended that the learned Judge had incorrectly recorded the evidence of the witness and, therefore, the applications were filed and the learned Judge, after considering the material on record, rightly granted the applications; consequently, he urged for dismissal of the petition. To buttress his submission, he has relied on the judgment in *Vinod Kumar Versus State of Punjab, (2015) 3 SCC 220*, and invited my attention to headnote 'E' and paragraph nos. 32 and 33 of the said judgment and argued that scope of re-examination is not limited to ambiguities in the cross-examination but the party can call the witness to give the explanation, if required for the decision of the case or he further submitted that if the witness is permitted to re-examine, it would not cause prejudice to the other side but other side would get an opportunity to cross--examine him and, therefore, submitted that order passed by learned Judge is just and proper and no interference is required in the Criminal Writ Petition.

12. Having heard the learned Advocate for the petitioners and learned APP for the State, the short question that arises before this Court is “*whether the order passed by the learned Judge for recalling the witness for re-examination is just and proper ?*”

13. It appears that the learned APP has filed the application before the learned Sessions Judge to permit him to recall the witness, as

the learned Judge has recorded that the witness has admitted to the content of the documents and, therefore, exhibited them, also mentioning that the date of the bond has been incorrectly recorded in the evidence. However, the learned Judge has not recorded any findings on this ground, but has observed that to remove the inconsistency in the evidence and the document's contents, it would be necessary to re-examine the witness. It is pertinent to note that the grounds raised in the Petition filed by the petitioners were not the ones being addressed. Moreover, it is not permissible to allow the witness to call for re-examination to remove the inconsistency that occurred and was brought on record during his cross-examination. Still, the purpose of re-examination is to remove the ambiguity that arose during the cross-examination only.

14. Apart from the above, the evidence was closed, and the endorsement on the evidence indicates that the same was “*Read Over to the parties and Accepted as Correct.*” Therefore, it cannot be said that the Judge has incorrectly recorded it. Additionally, the evidence was recorded in the presence of both the prosecution and the witness. However, the prosecution did not raise any objection at the time of recording, nor did it point out to the learned Judge that the witness had not admitted to the contents of the document. Nevertheless, it appears

that the prosecutor did not raise an objection at the time of recording the evidence, which leads to drawing an adverse inference against the prosecution. Therefore, I do not find substance in the grounds raised by the prosecutor to permit re-examination of the witness.

15. Thus considering the above discussion, it appears that the law laid down in *Rajaram Prasad* (supra), *Simrin Singh* (supra) and *Capitol Art House (P) LTD* (supra), are applicable in the case in hand as against the observations made in *Vinod Kumar* (supra), which hardly of any assistance to the prosecution in support of its case as the ground raised in the applications filed by the prosecution itself is not convincing in absence of raising any objection by the prosecution while recording of evidence.

16. *Consequently*, I found substance in the contention of the learned Advocate for the petitioners. As a result, the Criminal Writ Petition is allowed, and the impugned order dated 21.03.2025, passed by the learned Additional Sessions Judge, Udgir, is hereby quashed and set aside. Applications at exhibits 159 and 162 are hereby rejected. Criminal Application is disposed of. Rule is made absolute. Inform the learned Additional Sessions Judge, Udgir, accordingly.

(ABHAY J. MANTRI, J.)