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35-WP-633-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 CRIMINAL WRIT PETITION NO. 633 OF 2025

Ramkishan Ambadas Pandanwad

VERSUS

Pandhari Dagdoba Jaybhaye And Another

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Mr. Shivsamb N. Janakwade, Advocate for the Petitioner.

Smt. M. N. Ghanekar, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

DATE : 17th JUNE 2025.

PC :-

1. Heard the learned Advocate for the Petitioner.
2. The petitioner has challenged the order dated 29th January 2025 passed by the learned Judicial Magistrate First Class, Kandhar, rejecting the application below Exh.61 filed by the prosecution under Section 311 of the Code of Criminal Prodecure (Cr.P.C.) for recall of the witnesses.
3. Initially, the said application was allowed. However, the prosecution could not seek presence of the witness for almost a year. The prosecution thereafter again filed an application for recall of witness. It is clear from the application that the application was filed when the

complaint was posted for final argument. It is further stated that evidence of the witnesses is necessary for adjudication of the complaint, who are not examined. The documents on record are not proved by the concerned witnesses. The prayer was therefore made for calling of three witnesses.

4. Though, initially the application was allowed, the prosecution could not secure the presence of witnesses. Initially, the order was passed at Exhibit-38 and 39, witness summons was directed to be issued to the District Supply Officer, Nanded. However, inspite of that, the prosecution failed to secure the presence. The evidence was closed thereafter. However, again application came to be filed for recall of witness stating that the prosecution could not secure presence of witnesses. This time, the Court rejected the application below Exh.61. The learned trial Judge considered that though earlier summons was issued, the prosecution could not secure their presence. The evidence was thereafter closed on 28th November 2024. The learned Advocate for the accused even advanced argument on 24th December 2024. It is thereafter the prosecution sought time for final argument. It is after that

the application came to be filed. By observing all these things, the learned trial Judge rejected the application.

5. The learned Advocate for the petitioner-original informant vehemently argued that it was necessary in the interest of justice to allow the application by allowing the petition. The record from the Tahsil Office is necessary and therefore, the application was filed. It is the allegation of the prosecution in the case that the licence of fair price shop was issued by obtaining forged signatures of the villagers. The record is with the authorities and therefore, it is necessary to examine the concerned person. The Court has wrongly rejected the application only stating that the case is old one and is pending since 2012. He argued that the wording of Section 311 of Cr.P.C. shows that such application can be filed at any stage of the trial. The application filed at this stage thus, was maintainable. The Court was earlier convinced and had allowed the application Exh.38 and 39. Once the Court is convinced that a case is made out to recall a witness, it was for the Court to allow the application Exh. 61. He submits that thus, the trial Court has committed error. Even the State has filed revision and the same came to

be dismissed by way of impugned order.

6. Learned APP supports the petition.

7. On going through the orders, it is seen that the Court has mainly observed that inspite of giving several chances, the prosecution could not secure presence of the witnesses to whom summons were issued. The Court recorded that the case is pending since 2012 and dismissed his revision application.

8. On going though the reasoning and also looking that the present petition is filed by the original complainant though the prosecution started on the petitioner filing application under Section 156(3) of Cr.PC., still the case is a State case and it is for the prosecution to prosecute Respondent/accused. The prosecution has not come forward to file this petition.

9. Considering all above, this Court finds that there is no propriety in entertaining the petition. Specially when the complaint before the trial Court is pending since 2012, the argument of the accused is already over and it is at this stage the application is filed. Though earlier application was allowed, no presence of the witnesses could be secured. Looking to

this fact also, this Court finds that allowing the application will only result in protracting the prosecution.

10. For all the above reasons, this Court is not inclined to entertain this writ petition. Writ Petition is therefore dismissed. No order as to costs.

[KISHORE C. SANT, J.]