



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

CRIMINAL WRIT PETITION NO. 830 OF 2025

Madhav s/o. Dattaram Pawle
Age. 43 years, Occ. Business,
R/o. Palasgaon, Tq. Umari and
Dist. Nanded.

.. Petitioner

VERSUS

The State of Maharashtra
Through the Police Station Officer,
Umari Police Station, Tq. Umari,
Dist. Nanded.

.. Respondent

Mr. R.M. Bhagwat h/f. Mr. Ganesh P. Shinde, Advocate for the petitioner.
Ms.A.S. Deshmukh, APP for the respondent-State.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 11.08.2025
PRONOUNCED ON : 08.09.2025

ORDER :-

01. By way of filing this petition, the petitioner-original accused has approached this Court, challenging a common judgment and order dated 03.04.2025, passed by the learned Additional Sessions Judge, Bhokar, on applications Exhs. 88 and 89 in Sessions Case No. 39 of 2021.

By way of the impugned order, the learned Sessions Judge has allowed the applications filed by the prosecution.

02. Brief facts in short are that the accused is facing trial for the offences punishable under sections 302, 120-B and 506 of the Indian Penal Code. One Sambhaji Wankhede lodged an FIR with the Police Station, Umari. It is alleged that his wife, co-accused was having extra marital affair with the petitioner. It is alleged that because of that on 18.04.2020 they murdered mother of the informant. On the basis of that, crime came to be registered on 25.04.2020. The petitioner came to be arrested on 27.04.2020. Presently, the petitioner is on bail. After filing of the charge-sheet, the case is registered as Sessions Case No. 39 of 2021. The prosecution led its evidence and filed evidence close pursis. The matter was posted for recording statement under section 313 of the Cr.P.C.

03. The prosecution, thereafter, filed applications Exhs. 88 and 89. It is prayed that during the course of trial, statements under section 164 of the Cr.P.C. of the informant came to be exhibited and the same be read in evidence. It is stated that due to oversight the statement of the informant (PW-6) under section 164 of the Cr.P.C. was not confronted

and therefore the same be exhibited and read in evidence. It is also prayed by application Exh.89 that statement of Supriya Wankhede, not examined in the trial, recorded under section 164 of the Cr.P.C. also be exhibited.

04. The learned Sessions Judge, by way of the impugned common order was pleased to allow both the applications.

05. The learned Advocate for the petitioner vehemently argued that when PW-6 was examined, the document which is sought to be exhibited is not exhibited during his examination in the Court. The accused, thus, lost opportunity to confront on the said document. Without proving the contents of said statement, said document cannot be exhibited and read in evidence. Another statement of daughter of the informant recorded under section 164 of the Cr.P.C. is also sought to be exhibited and be read in evidence without examining her in the Court on oath. He submits that the statements cannot be exhibited and be read in evidence in this passion. He, therefore, prays that the order needs to be quashed and set aside.

06. Learned Advocate for the petitioner relies on the judgment in

the case of **IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING INADEQUACIES AND DEFICIENCIES IN CRIMINAL TRIALS VS. THE STATE OF ANDHRA PRADESH AND ORS., SUO MOTO WRIT(CRL) NO.(S) 1/2017**. The Hon'ble Apex court in para 19 of the judgment held as under :-

"19. The court is of the opinion that the Draft Rules of Criminal Practice, 2021, (which are annexed to the present order, and shall be read as part of it) should be hereby finalized in terms of the above discussion. The following directions are hereby issued:

(a) All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the state government's co-operation is necessary in this regard, the approval of the concerned department or departments, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

(b) The state governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from today. This direction applies, specifically in respect of Draft Rules 1-3. The appropriate forms and guidelines shall be brought into force, and all agencies instructed accordingly, within six months from today."

. Learned Advocate for the petitioner also relies on judgment of this Court at Principal seat in the case of **Purshottam Ishvar Amin Vs. Emperor reported in (1920) 10 BOM CK 0015**.

07. The learned APP on the other hand vehemently argued that the statements under section 164 of the Cr.P.C. are recorded by following procedure before the Magistrate. The statements are on oath. As the statements are recorded by the Magistrate, same can be directly used as evidence in the Trial. Proper reasons are given in the application while praying to exhibit the documents. She, thus, prays for dismissal of the petition.

08. This Court has heard the parties. The learned Sessions Judge in the impugned order has observed that in view of section 80 of the Indian Evidence Act, there is presumption of documents produced as record of evidence. That section provides that Court shall presume genuineness of the document and truth of the statement. The statements were recorded as per section 80 of the Indian Evidence Act and thus they have presumptive value. He further observed that even if witness Supriya is not examined, still her statement can be accepted.

09. This Court has seen Exhs. 80 and 81 of the Indian Evidence Act and Section 164 of the Cr.P.C. Section 80 attaches presumption to the document or statement recorded before any Judge or Magistrate. In such case, the Court shall presume genuineness of such document.

Section 164 of the Cr.P.C. provides for recording of confession and statement before the Magistrate. A question, therefore, whether statement made under section 164(5) can be taken on record and read as evidence in the trial. No doubt, section 80 of the Evidence Act provides that confession or statement recorded before the Magistrate, is to be taken as genuine. Statement under section 164 of the Cr.P.C. is a statement recorded on oath, whether that by itself makes that statement admissible in evidence without examining author of the statement.

10. This Court finds that when witness is produced by the prosecution, he is cross-examined by the accused to check the veracity of the statement. Cross-examination is an integral part of fair trial. In the present case PW-6 was examined before the Court and still his statement under section 164 was not exhibited through him. There is no reason as to why it was not produced in evidence. Certainly, it is for that the accused could not cross-examine the said witness on that document. So far as case of Priyanka is concerned, she is not examined at all in the trial. The accused is, therefore, not in a position even to confront her in cross-examination. It is trite law that no evidence can be directly taken on record without giving an accused an opportunity to cross-examine such witness. In the present case it is clearly seen that the accused is

not given an opportunity to cross-examine the persons whose statements are sought to be exhibited and proved. The statement under section 164 of the Cr.P.C. though is recorded by the Magistrate; it is still during the course of investigation and not in the proceeding.

11. Merely because the statement is recorded by the Magistrate is no reason to exhibit the document directly. When opportunity is not given to the accused to confront the witness, it would be unfair to rely upon such evidence. In the present case, it is also not clear as to why PW-6 was not shown the documents i.e. his statement under section 164 of the Cr.P.C. So far as witness Priyanka is concerned, it is only stated that she is young student and residing at different place, is no reason not to examine her and more so, to take her statement under section 164 of the Cr.P.C. as evidence without examining her. This Court finds that the reasoning of the Sessions Court is not proper and correct. In any case to exhibit the documents without giving opportunity to the accused is totally against fair trial. This Court finds substance in submissions of learned Advocate for the petitioner. This Court is clearly of the opinion that the learned Sessions Judge has erred in passing the order. The order deserves to be quashed and set aside.

12. In the result, this Criminal Petition is allowed. The impugned order dated 03.04.2025 passed by the learned Additional Sessions Judge, Bhokar, Dist. Nanded below Exhs. 88 and 89 in Sessions Case No. 39 of 2021 is quashed and set aside.

[KISHORE C. SANT, J.]