



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1085 OF 2025

Babasaheb Uttam Pawar And Another
VERSUS

The State Of Maharashtra And Another

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Advocate for the Petitioner : Mr. R. R. Karpe

APP for Respondent-State : Mr. S. M. Ganachari

Advocate for Respondent No. 2 : Mr. K. D. Jadhav

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CORAM : SACHIN S. DESHMUKH, J.

Date : 16th September, 2025

ORDER :-

1. Petitioner raises an exception to the order dated 19.06.2025 rendered by the learned Sessions Judge, Ahmednagar, dismissing the Criminal Revision Application No. 53 of 2025, endorsing the order rendered by the learned Chief Judicial Magistrate, Ahmednagar, in Regular Criminal Case No. 718 of 2022 below Exh. 24 for recalling of witnesses, refusing to set aside the "no cross" order and permission to cross-examine the prosecution witnesses.

2. The petitioners are facing the prosecution for the offences punishable under Sections 326, 324, 323, 504 and 506 read with 34 of the Indian Penal Code, pursuant to the registration

of Crime No. 156 of 2022. Upon investigation, the Investigating Officer submitted the charge-sheet. Consequently, the charge was framed against the accused persons for the above-said offences resulting into commencement of trial.

3. During the course of trial, the examination-in-chief of the prosecution witnesses i.e. PW-1 to PW-4 was recorded. However, the Advocate representing the petitioner was absent for cross-examination of the said witnesses. Resultantly, 'no cross-examination' order was passed against the petitioners. Thereafter, an application was presented, seeking permission for cross-examination of the witnesses which eventually came to be rejected by the learned Trial Court on 16.04.2025.

4. Raising challenge to the order rendered by the learned Magistrate, the revision application was presented. However, the learned Sessions Judge, by its order dated 19.06.2025, rejected the revision application. Resultantly, petitioners approached this Court under Article 227 of the Constitution of India.

5. Heard learned counsel for petitioners, learned counsel for respondent No. 2 and the learned APP for State.

6. It is the contention of the learned counsel for the petitioner Mr. Karpe that although the opportunity was extended to cross-examine the prosecution witnesses, however, the cross-examination was not conducted due to absence of the counsel representing the petitioners in the Trial Court. However, in the interest of justice, the request of the present petitioners ought to have been considered by the Courts below as it would cause serious prejudice to the petitioners. These petitioners are facing the prosecution, therefore, adequate opportunity deserves to be extended.

7. Per contra, Mr. Jadhav, learned counsel for respondent No. 2 supported the order submitting that the sufficient opportunity was extended to the petitioners. However, have chosen not to cross-examine the prosecution witnesses inspite of sufficient opportunity, the Courts below have not committed any error. As such, prayed for dismissal of the petition.

8. Having considered the respective submissions of the litigating sides, it is a matter of record that pursuant to the registration of crime, present petitioners are facing prosecution for the offences punishable under Sections 324, 323, 504 and 506

read with 34 of the IPC. Equally, it is a matter of record that the examination-in-chief of prosecution witnesses i.e. PW-1 to PW-4 was recorded. However, it is only on account of absence of the advocate representing the present petitioners, cross-examination was not conducted. Having suffered an order of 'no cross-examination', a request was made seeking permission to conduct the cross-examination of the witnesses. The same is turned down by the learned Trial Court.

9. Considering the fact that allowing the trial to conclude without cross-examination of the prosecution witnesses by the present petitioners would cause serious prejudice. Moreover, the Courts have a duty to ensure a fair opportunity needs to be conferred even to the individual facing prosecution, in order to establish the innocence. Procedural technicalities, in any event, shall not defeat the substantial justice.

10. The significance and importance of cross-examination has been underlined by the Hon'ble Apex Court on numerous occasions, as the denial of the right to cross-examine would amount to denial of the right to fair trial. Therefore, the necessary opportunity for cross-examination of the prosecution witnesses is

rather warranted on the condition that unnecessary adjournments will not be granted to the petitioners for cross-examination of the witnesses.

11. Thus, the interest of justice would be subserved by allowing the petitioners to cross-examine the prosecution witnesses, however, subject to costs of Rs. 5,000/- (Rs. Five Thousands Only), be paid to each of the prosecution witnesses i.e. PW-1 to PW-4. Needless to state that the failure on the part of petitioners to pay the aforesaid costs would restore the order under challenge. Hence, pass following order :-

ORDER

- (I) The writ petition is **allowed**.
- (II) The order dated 19.06.2025 rendered by the learned Sessions Judge, Ahmednagar in Criminal Revision Application No. 53 of 2025 confirming the order dated 16.04.2025 rendered by the learned Chief Judicial Magistrate, Ahemadnagar below Exh. 24 in Regular Criminal Case No. 718 of 2022, is hereby quashed and set aside.
- (III) The present petitioners are permitted to cross-examine the prosecution witnesses i.e. PW-1 to PW-4,.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi