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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1659 OF 2016
(Subhash Laxman Rathod Vs. The State of Maharashtra)

Mr.Satyajit S.Bora, Advocate for the Petitioner.
Mr.S.B.Jadhav, APP for the Respondent/State.

(CORAM : SUSHIL M. GHODESWAR, J.)

RESERVED ON : 11 SEPTEMBER 2025
PRONOUNCED ON : 19 SEPTEMBER 2025

ORDER :

1. By this petition, the petitioner is praying for quashing and setting aside the order dated 05.12.2016 below Exh.1 in ACB No.6/2011 passed by the learned Additional Sessions Judge-1, Nanded.

2. This Court, vide order dated 21.12.2016, stayed the proceedings of ACB No.06/2011 until further orders. Since then, the stay is operating and the matter was not even circulated by any of the parties.

3. The learned Advocate for the petitioner submitted that initially one Crime No.3043/2010 came to be registered at Vazirabad

Police Station, Dist.Nanded for the offence punishable under Sections 7, 13, (1), (d), r/w 13(2) of the Prevention of Corruption Act, 1988. After the charge sheet was filed, the said Crime Number was converted into ACB Case No.6/2011 and came to be committed before the court of Additional Sessions Judge-1, Nanded for further trial. The prosecution has examined witness No.1/Competent Authority and Investigating Officer. Unfortunately, the complainant in this case has expired during the pendency of the trial, therefore, evidence of the complainant could not be adduced by the prosecution. Thereafter, the prosecution closed their side and on behalf of the accused, evidence was led by examining two defence witnesses i.e. D.W.No.1 Assistant Controller Legal Metrology and D.W.No.2 Former Assistant Controller of Metrology. The learned Advocate for the petitioner further submits that after the evidence of the defence witnesses on behalf of accused side was closed, the matter was kept for final arguments on 07.11.2016. Again the matter came to be adjourned on 16.11.2016. Even on the said date, the matter came to be adjourned to 23.11.2016 for final arguments.

4. According to the learned Advocate for the petitioner, on

23.11.2016 and 24.11.2016, the learned Advocates for the prosecution as well as accused persons have completed their final arguments and the matter was kept for passing judgment on 02.12.2016. However, on 02.12.2016, again the matter was adjourned to 05.12.2016. On 05.12.2016, the Court *suo-moto* passed an order purportedly exercising its powers u/s 165 of the Indian Evidence Act thereby directing the defence witness Sanjiv Nagorao Kavare to remain present on 21.12.2016 at 11.00 a.m. with inward and outward registers of the office at Nanded and Degloor for the month of June 2010. Being aggrieved by the said order, the petitioner has approached this Court under Article 227 of the Constitution of India.

5. The learned Advocate for the petitioner submitted that while exercising powers u/s 165 of the Indian Evidence Act, the Court has passed suo-moto order thereby completely failing to give any legal, just and proper reasons to exercise the said powers. He has further referred to the documents produced by defence during trial at Exhibit Nos.52, 53 and 54, which are communications between the petitioner and accused/Department. The said documents were referred to defence witness No.2. The said witness identified the said documents.

After the examination in chief of the said defence witness was over, the prosecution had cross examined the said witness. Therefore, according to the learned Advocate for the petitioner, there are no legal and proper reasons to call the witness again. The learned Sessions Court also did not have any reasons for recalling such witness. Therefore, the order suffers from illegality.

6. The learned Advocate for the petitioner submitted that powers u/s 165 of the Indian Evidence Act and u/s 311 of the Cr.PC. can be exercised by the Sessions Court at any stage of the trial. However, to exercise such powers, the evidence which is likely to be tendered by the witness, should be *germane* to the issue involved. According to him, reading of the order discloses no plausible explanation provided by the learned Court for calling the witness. He also submits that the powers of recalling the witness is to be exercised for the just decision of the case and not for the purpose of filling in the lacunas of the prosecution side and therefore he prayed for quashing of the impugned order.

7. Per contra, the learned APP supported the impugned order

and prayed for dismissal of the petition.

8. After perusing the documents placed before this Court, it has come to the notice of this Court that the learned Sessions Court was pleased to observe in its order that as the complainant has died and he could not be examined or cross examined and the PW.No.1, who was also examined, but was not aware about the documents, which were exhibited at Exhibit Nos. 52, 53 and 54, therefore in order to ascertain the truth behind these documents, the Court felt it necessary to recall the witness Sanjiv Kavare, who is working as an Assistant Controller Legal Metrology, Nanded to remain present alongwith inward and outward registered by issuing summons to him.

9. The submissions made by the learned Advocate for the petitioner are significant that no plausible explanation has been given as to why the said witness is required to be called and examined. While exercising powers u/s 165 of the Indian Evidence Act and u/s 311 of the Cr.P.C., the Court, while passing the order as regards recalling of the witness, is expected to give plausible explanation and proper reasons enabling both the sides to get fair opportunity.

10. The Hon'ble Supreme Court in **Rajaram Prasad Yadav Vs. State of Bihar and another [(2013)14 SCC 461]**, while dealing with the scope of Section 311 of the Cr.P.C., was pleased to lay down various principles. The Apex Court, in the said judgment, was pleased to observe that the object of Section 311 of the Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision. The exercise of power under Section 311 of the Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case. The exercise of the said power cannot be dubbed as filling in a lacuna in the prosecution case and further the said wide discretionary power should be exercised judiciously and not arbitrarily. Thus, the Hon'ble Supreme Court has stated in clear words that power u/s 311 of the Cr.P.C. must be invoked by the Court in order to meet the ends of justice for a strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that the fair trial entails the interest of the accused, the victim and the society. Therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

11. As on date, the learned Additional Sessions Judge-1, who has passed the impugned order, may not be available there to re-examine the proposed defence witness, as ordered. Therefore, the learned Judge, who is now having the proceeding of ACB No.6/2011, is at liberty to recall the witnesses, however, while doing so, he is expected to give detailed reasoning for the same. Therefore, the petition is partly allowed. The impugned order dated 05.12.2016 below Exh.1 in ACB No.6/2011 passed by the learned Additional Sessions Judge-1, Nanded, is quashed and set aside. The learned Judge who is now dealing with ACB No.6/2011 is therefore directed to conclude the trial as early as possible.

12. The criminal writ petition stands disposed of in view of the above terms.

(SUSHIL M. GHODESWAR, J.)