

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.6721 OF 2024

SATISH
RAMCHANDRA
SANGAR

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Date: 2025.07.23
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Ketan Kantilal Seth

Age : 62 Years, Indian Inhabitant,
Residing at : B 702, Subnam Building,
New India Insurance Colony, Juhu Lane,
Andheri (West), Mumbai : 400 058.

...Petitioner

Versus

The State of Maharashtra

Through Economic Offences Wing,
Mumbai.

...Respondent

Mr.Siddharth Jagushte:-	Advocate for Petitioner.
Mr.H.J.Dedhia:-	APP for Respondent – State.
Mr.Rupesh Darekar : API:-	Banking–1, Unit 9–Economic Offences Wing, Mumbai.

CORAM : S. M. MODAK, J.

DATE : 18th JULY 2025

P. C. :-

1. Heard learned Advocate Shri.Jagushte for the Petitioner/Accused No.1 and learned APP Shri.Dedhia for Respondent – State.
2. The Court of Additional Chief Judicial Magistrate, 47th Court, Esplanade – Mumbai as per the order dated 16th October 2024 refused to recall PW No.9 – Investigating Officer (Retired ACP) – Prabhakar

Loke for cross-examination. The Economic Offences Wing (“EOW”) has charge-sheeted 4 Accused persons for the offences punishable under Sections 409, 420 read with 120-B of the Indian Penal Code, 1860 (“IPC”).

3. The case of the prosecution is the present Petitioner / Accused No.1 has collected lakhs of rupees from the First-Informant and others for the purpose of purchase of government securities. The Petitioner No.1 is running the business in the name and style as *Giltage Management Services Limited* (“GMSL”). The *Home Trade Limited* (“HTL”) of which the Accused No.2 is the Director is supposed to purchase the government securities. It is the case of the prosecution that neither the securities were purchased nor the money is refunded.

4. During trial, the Investigating Officer is examined as PW No.9. Normally, the Officer is examined as a last witness. It indicates the prosecution no more wants to examine any more witness. However, in this case, after his examination, the PW No.10–Jitendra Prabhakar Ravetkar serving with Janata Sahakari Bank–Fort Branch was examined. **The present Petitioner and his Company–GMSL was holding an account with the said Bank.** The said witness has produced certain account statements during investigation before the EOW. The

Bank witness was examined to prove those account statements. Even the said Bank was having the Account of HTL of which the Accused No.2 is the Director. He also produced the statements of that account. The said witness is also cross-examined.

5. On this background, the Petitioner filed an Application as per the provisions of Section 311 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) **for recalling the Investigating Officer–Mr.Prabhakar Loke.** It was rejected as per order dated 16th October 2024. During arguments, **Mr.Jagushte justified the prayer for recalling on the following grounds:-**

- (a) During investigation, the Accused No.1 gave **a letter to the Investigating Officer Shri.Loke on 24th February 2005.** By the said letter, the details of payment made and received from HTL were given to the Investigating Officer. The letter is at Exhibit-140 (Page No.72).
- (b) My attention is invited to the document titled as *“Confirmation of Out Standing delivery”* at Sr.No.7 of the said letter. That letter is annexed on Page No.178. It is titled as *“Delivery Outstanding As On 31st March 2002”*.
- (c) In respect of this document, the ground for recalling is on the basis of **answer given by the Investigating Officer during cross-examination conducted on behalf of the Accused No.3.** In Para No.10 (running Page No.13), the witness answered “I

have not seen any letter showing that GMSL (of which the Accused No.1 is Director) has sought for Securities from HTL (of which the Accused No.2 is Director)". According to Mr.Jagushte, in fact they have written a letter to the Investigating Officer below Exhibit-140.

- (d) **The second ground for recalling is on the basis of examining the Bank witness – PW No.10 after the examination of PW No.9 is over.** The submission is there are certain pages which are missing from the statements of the Bank account of GMSL produced by the witness and in fact, this came to their knowledge when the Bank witness is examined and this was not known when the Investigating Officer was examined.
- (e) Third ground which is taken **about the knowledge of the Investigating Officer about the Arbitration dispute** in between GMSL and HTL. That was pending before the Arbitration Assistant attached to Pune Stock Exchange and in fact, Mr.Loke only has called for the details of the Award by writing a letter to the said Arbitration Assistant. The letter is below Exhibit-142 (Page No.184). When the Investigating Officer is cross-examined on the basis of this letter, he has answered *"I did not try to obtain certified copy of award of Pune Stock Exchange because it was not part of my investigation"*. (Para 5 of Internal Page No.8). **Mr.Jagushte fairly admits that due to inadvertence, the letter written by Mr.Loke was not shown to him.**

6. These are the only three grounds which are pressed during arguments.
7. Learned APP made the following submissions:-
- (a) The question is already put on behalf of the Accused No.1 to PW No.9 about letter dated 24th February 2005 below Exhibit-140. So the attention of the witness was already drawn to the said letter.
 - (b) According to Mr.Dedhia, the answer which had come about the letter by GMSL to HTL has come during cross-examination conducted on behalf of the Accused No.3 and even though during the cross-examination by Accused No.1, he admits about the letter (Exhibit-140) subsequently on the basis of answer given by Mr.Loke during the cross-examination of the Accused No.3, cannot be the ground for recalling.
 - (c) Mr.Dedhia invited my attention to the answer given by Mr.Loke which is recorded in Para No.5 of the cross-examination. The Investigating Officer is aware about the Award by Pune Stock Exchange. Subsequent answer given by him about ignorance is in respect of the original Award. As such, there is no ambiguity.
 - (d) In respect of the facts stated by the Bank witness, Mr.Dedhia has submitted to the orders of the Court.
8. On this background, I have read the order passed by the learned

Magistrate. **Learned Magistrate observed**, “*certain facts can be proved by the accused by examining the defence witness. Even in respect of the Award, a defence witness can be given*”. Further reasoning in respect of certain missing pages of Bank statement, **learned Judge observed**, “*why the advocate of accused No.1 has not cross-examined the Investigating Officer on that point*”.

9. I agree to some of the reasoning given by the trial Court but not **entirely**. In fact by way of practice, the prosecution ought to have examined the Bank witness earlier to the examination of the Investigating Officer. But for some reason or other, he was not examined earlier. It is true the papers are collected during investigation but the idea will be more clear when the witness is examined in respect of those papers. At the time of examination of the Investigating Officer – PW No.9, the Petitioner was not aware which statements will be shown to the Bank witness.

10. The emphasis of Accused No.1 is about the payment made by them to HTL. **The Bank witness** was also cross-examined on this issue. He replied “*I have submitted account statement of account No.1422 of GMSL pertaining to period from 09.02.2002 to 30.03.2002 to police*.” Learned Judge recorded “*but document is not find in charge-sheet*”.

11. It is a specific case of the Accused No.1 that not only part of the money but the entire amount is paid by them to the Accused No.2 and it also covers the period from 9th February 2002 upto 30th March 2002.

The trial Court has overlooked the fact that the trial is going on and this is the only stage wherein the parties can adduce evidence. This is the best opportunity available to the parties to prove their case.

Ultimately, a decision of the case is based on the evidence which is adduced by the parties. At an Appellate stage, additional evidence is exceptionally permissible.

12. **PW No.9** is also cross-examined on this theory of entire payment by the Company of Accused No.1 to the Company of Accused No.2. It find place in Para No.3. The suggestion “*it is not true to say that GMSL has transferred more amount to HTL than it received from its customers*” was denied by Mr.Loke. So there is foundation during cross-examination. **In view of subsequent examination of the Bank witness, the learned Judge ought to have recalled Mr.Loke.**

13. In respect of the letter at Exhibit-140 written by the Accused No.1 to Mr.Loke, he has admitted that what has left out during the cross-examination was showing the ‘*delivery outstanding document*’ on page No.178. To that extent, the learned trial Court Judge was right

in rejecting the prayer for recalling. Because, **it is for the Accused to prove the *inter se* transaction in between him and the Accused No.2.**

The steps permissible by law are available to him. Merely because Mr.Loke has said one fact during cross-examination by Accused No.1 and said another fact during cross-examination by Accused No.3 **cannot be a ground for recalling.**

14. Every Accused has got right to put up his story. These answers if inconsistent with each other cannot be a ground for recalling. The trial Court while appreciating the evidence, will read it in its entirety. If the Accused No.1 wants to elaborate this point, the legal ways are available to him.

15. **Third ground** is in respect of knowledge of Mr.Loke about the Arbitration proceeding. It is true Mr.Loke has written a letter to the Arbitration Assistant calling for the information. It is on Page No.184 (Exhibit-142). When cross-examined, Mr.Loke admits receipt of the Award from Pune Stock Exchange but when further explanation is sought, he answered “*he did not try to obtain certified copy of the award of Pune Stock Exchange.*” The explanation which he gave is it was not part of his investigation. Due to oversight, the letter was not shown to Mr.Loke.

16. I am permitting recalling on that ground. So on two grounds, I am allowing the Petition of the Accused No.1. In view of that, following order is passed:-

ORDER

- (i) The Petition is allowed.
 - (ii) The **order dated 16th October 2024** passed by the Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai **is set aside.**
 - (iii) The Investigating Officer – PW No.9 – Prabhakar Loke **is recalled** for the purpose of cross-examination by the Accused No.1 only on two grounds:-
 - (a) **Cross-examine in respect of the letter below Exhibit-142 and**
 - (b) **to cross-examine Mr.Loke in respect of the Bank statement produced by the Bank official PW No.10.**
 - (iv) The Petitioner should pay cost of Rs.25,000/- (Rupees Twenty Five Thousand) to the District Legal Services Authority, Mazgaon Office, Mumbai within a period of 2 weeks and to produce a receipt before the trial Magistrate and then only cross-examination will be allowed.
17. In view of the above, **the Petition stands disposed of.**

[S. M. MODAK, J.]