

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5802 OF 2025**

Narindersingh Amritsingh Bindra	...	Petitioner
versus		
State of Maharashtra	...	Respondent

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Mr. Abhijeet Sanjay Lende, for Petitioner.
Mrs. R.S.Tendulkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 13 NOVEMBER 2025

ORDER :

1. Heard the learned Counsel for the parties.
2. The Petitioner – accused takes exception to an order dated 30 July 2025 passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No.174 of 2019, whereby the application preferred by the prosecution to summon Mr. Jiwan Thakare, as a witness, came to be allowed by invoking the powers contained in Section 311 of the Code of Criminal Procedure, 1973.
3. The Petitioner is facing prosecution for the offences punishable under Sections 353, 332 and 504 of the Indian Penal Code, 1860. In the trial, after examining four witnesses, the prosecution preferred an application to summon Jiwan Thakare as a witness, though the Investigating Officer had not recorded the statement of the said witness under Section 161 of the Code. The prosecution asserted that the examination of the said witness was necessary for a just decision of the case, as the name of the said witness

finds mention in the FIR as well as evidence of the other prosecution witnesses.

4. The Petitioner resisted the application on the ground that the name of the said witness was not included in the list of witnesses to be examined by the prosecution, and, even his statement under Section 161 of the Code, was not recorded. The prosecution had moved the said application to fill in a glaring lacuna in its case.

5. By the impugned order, the learned Additional Sessions Judge was persuaded to allow the application as the record revealed that the said witness was involved in the incident in question, and, yet the IO had not recorded the statement of the said witness. The examination of the said witness, in the view of the learned Additional Sessions Judge, was necessary to meet the ends of justice.

6. Being aggrieved, the Petitioner has invoked the writ jurisdiction.

7. Mr. Lende, the learned Counsel for the Petitioner, would urge that, if required, the IO could have resorted to the power to conduct further investigation under Section 173(8) of the Code, and recorded the statement of the said witness. In the absence thereof, the examination of the said witness, whose previous statement is not on record, would cause grave prejudice to the accused. It was submitted that as the trial is underway and only four witnesses had been examined, at that stage, learned Additional Sessions

Judge could not have formed the opinion whether the examination of the said witness is necessary for a just decision of the case. Proper course would have been to examine all the prosecution witnesses and then determine whether the examination of the said witness is necessary. To lend support to this submission, Mr. Lende placed reliance on the judgment of the Supreme Court in the case of **Rama Chaudhary V/s. State of Bihar**¹.

8. In opposition to this, learned APP supported the impugned order. It was submitted that in the FIR itself, the name of the said witness found mention with the offending acts committed by the Petitioner qua the said witness. Even the said witness had undergone a medical examination post the occurrence. Attention of the Court was invited to medico-legal certificate issued by the CMO, Civil Hospital, Nashik.

9. Evidently, Jiwan Thakare was not cited as witness for the prosecution. Nor his statement was recorded during the course of investigation. However, from the perusal of the FIR, it becomes abundantly clear that the first informant alleged that though Jiwan Thakare tried to reason with the Petitioner -accused, the latter abused Jiwan Thakare in filthy language, intimidated him and also assaulted him. The material on record indicates that the other witnesses have also deposed to the said fact. The medico-legal certificate indicates that the said witness was examined on 19 November

¹ (2009) 6 SCC 346

2015 and had reported history of assault. It is rather inexplicable as to why the IO did not thought it fit to record the statement of Jiwan Thakare during the course of investigation. However, that cannot be the sole determinative factor for exercising the power under Section 311 of the Code.

10. It is well neigh settled that the power under Section 311 of the Code ought to be invoked in quest of truth, and, with a view to obtain proper proof of such facts which lead to a just and correct decision of the case. The endeavour to examine witnesses with an avowed object of arriving at a just decision of the case, cannot be termed as filling in lacuna in the prosecution case, unless it could be demonstrated that the examination of the witness would cause serious prejudice to the accused, leading to a clear mis-carriage of justice.

11. The touchstone on which the power under Section 311 of the Code has to be exercised is, whether it is essential for a just decision of the case. In the case of **Rajaram Prasad Yadav V/s. State of Bihar and Anr.**², the Supreme Court, after analysis of the provisions contained in Section 311 and the previous precedents, culled out the principles which govern the exercise of discretion under Section 311 of the Code, as under :

“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the

² (2013) 14 SCR 461

following principles will have to be borne in mind by the Courts :

17.1 Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

17.2 The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3 If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

17.4 The exercise of power under Section 311 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.

17.5 The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6 The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7 The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8 The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

17.9 The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10 Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

17.11 The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12 The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13 The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14 The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with

care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, 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.”

12. Applying the aforesaid principles to the facts of the case at hand, it becomes evident that the witness proposed to be examined is the victim of the alleged offences. In the FIR and the evidence gathered during the course of the investigation, the presence and involvement of the said witness in the incident in question, is clearly evident. The examination of the said witness is, in a sense, indispensable for arriving at a just decision of the case. It is trite, even a designedly faulty investigation does not preclude a criminal court from exercising the powers under the Code in the quest of justice.

13. In the aforesaid view of the matter, this Court does not find any justifiable reason to interfere with the exercise of discretion by the learned Additional Sessions Judge, which promotes the cause of justice.

14. Hence, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)