

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

CRIMINAL APPLICATION NO. 668 OF 2025

Sangeeta Dilip Varpe
and Anr.

...Applicants

Vs.

The State of Maharashtra

...Respondent

Ms. Tanvi Tapkire a/w Mr. Ashutosh Shukla	Advocate for the Applicants
Mr. B. V. Holambe-Patil	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 04th JULY 2025

P. C. :-

1. Heard learned Advocate for the Applicants/accused and learned APP for the Respondent – State.
2. The only issue involved in this application is : “*whether the learned trial Court Judge, by explaining the question to PW No. 4-Ashok Baban Phadtare, has exceeded his limits ?*”. PW No. 4-Ashok Phadtare is a witness to the recording of the dying declaration of the deceased by the Police. It is case that he was present when the Police

recorded the dying declaration of the deceased-Shankar at OM Shri Hospital. His chief examination is on page no. 23. The accused put question to him on 25.04.2025 i.e.

"प्रश्न :- तुम्ही शंकरने दवाखान्यामध्ये पोलीसांना दिलेल्या जबाबाविषयी तुमचा जबाब पोलीसांनी नोंदविण्यापूर्वी इतरांना सांगितले नव्हते. "

3. According to the learned Advocate for the Applicants, he answered that he has not disclosed to anyone prior to the recording of his statement. Their contention is at that juncture, the learned Judge again explained the question to the witness, and at that time, the witness changed his answer and he replied "सांगितले". Then the Applicant expressed desire to file an application and adjourned the cross-examination.

4. That is why the application was filed before the trial Court, requesting to record the correct events that have taken place at that time. The learned Judge, after hearing both sides, rejected the request and not only that, imposed cost of Rs. 2000/-.

5. With their assistance, I have gone through the necessary

applications. The learned Advocate for the Applicants relied upon the observations in case of *Ram Chander Vs. State of Haryana*¹ and more specifically para nos. 2 and 3. Ms. Tapkire contended the learned Judge while recording the answer “सांगितले”, ought to have recorded in the evidence that this answer was given in pursuance of the question put by the Court. There is a further request to permit the Applicants to conduct cross-examination. There is much emphasis on the conduct of the Judge, even in imposing cost of Rs. 2000/-.

6. The learned APP submitted the accused cannot dictate how the Judge should behave and he justified the power of the Court to explain the question to the witness. Whatever has happened before the Court, only the learned Judge, the accused, their Advocates, and the APP can explain in a better way. It is difficult for this Court to verify unless and until there are notings in the evidence.

7. The learned Judge in the impugned order has observed that “*he has explained the question to the witness without making any addition*”. In above referred case, the trial Court Judge threatened the prosecution witness of rescinding from Police statement. This was

1 1981 AIR 1036

deprecated. It was observed, Judge should not be a mute spectator and recording machine. Judge should not encroach upon powers of public prosecutor and defence counsel. He must take prosecution and defence with him. All should work as a team and whose captain is Judge.

8. The learned Judge has to be impartial and patient and he should record correctly and precisely whatever happens before the Court. While doing this balancing, he should not favour either of the parties.

9. It is true that the Court has every right to explain the question to the witness, if the Court feels that the witness has not understood it. If the witness has answered and if the learned Judge is not happy with the answer (which perception is wrong), he is not supposed to put the question in such a manner which will give an indication to witness to answer it differently. But it is difficult to ascertain whether this has happened in this case.

10. At the most, what can be done **is to direct the trial Court** to record in the evidence itself that answer given by the witness “सांगितले” was given **after the Court explained the question to the witness.** Trial Court to do this. So if there is an occasion, the accused

can make use of it, if this is recorded in the evidence itself.

11. On this background, the Applicants can be **granted liberty to cross-examine the witness in respect of that answer**. On the basis of grievance raised, this Court is not issuing directions to trial Court to record first “answer given by the witness as नव्हते”. But it is certain when the Judge has explained the question to the witness (and then recorded the answer), the learned Judge ought to have recorded all these events in the evidence. This has not happened. If the learned Judge could have done it, at that juncture only, further complications could have been avoided.

12. At the same time, I feel that the learned Judge was too harsh in imposing cost of Rs. 2,000/-. The accused were perfectly justified in filing the application and they have not committed any wrong. So, let the cost of Rs. 2,000/- be set aside.

13. With these observations, the Application is disposed of.

[S. M. MODAK, J.]