



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO. 06 OF 2025

APPLICANT : Central Bureau of Investigation,
Anti Corruption Branch, Nagpur.

-VERSUS-

RESPONDENTS 1. Shri Harshwardhan Nanoti,
ACCUSED Income Tax Officer, Khamgaon,
R/o Flat No. 202, Krishnakruti
Residency, Tapadiya Nagar, Akola,
Maharashtra.
Presently Residing at 202, Abhinav
Residence, Laxminagar, Nagpur.

2. Shri Rajendra Jaiswal,
R/o Jatharpeth, Near Jasnagra Sweets
and Bakery, Akola.

Mr. P.K. Sathianathan, counsel for Applicant/CBI.
Mr. Dewang D. Vaidya, counsel for respondent No.1.
Mr. A.R.Deshpande, counsel for respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **17/07/2025**

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Heard finally with consent of learned counsels appearing for the parties.
3. The Central Bureau of Investigation (Anti-Corruption Branch), Nagpur, has filed this criminal revision application challenging the order dated January 24, 2024, passed by the Additional Sessions Judge, Khamgaon, which rejected the adjournment application and the application for recalling a witness.
4. The learned counsel for the applicant submitted that the accused are facing charges of the offence punishable under Sections 7, 8, and 15 read with Section 13(1)(d) of the Prevention of Corruption Act. The crime was registered on 12/09/2013 by the Central Bureau of Investigation (Anti-Corruption Branch), Nagpur, on the basis of a complaint lodged by one Shri Sadanand Madhukar Ingle against Harshwardhan Ratnakar Nanoti, Income Tax Officer, on an allegation that the aforesaid Harshwardhan Ratnakar Nanoti demanded a bribe of Rs. 75,00,000/- from the

said complainant on 10/09/2013 for setting aside the income tax dues from 3 Crores to Rs. 1 Crores. On the basis of the said report, police registered the crime. The trap was conducted, and after completion of the investigation, the charge-sheet was filed.

5. The accused has filed a writ petition before the Division Bench of this Court bearing Writ Petition No. 46/2025, and by order dated 28/04/2025, the Division Bench of this Court directed the prosecution as well as the accused to complete the trial within a period of six months.

6. Accordingly, on 5/1/2024, the trial was fixed for recording the evidence, but the Special Prosecutor of the Central Bureau of Investigation (Anti-Corruption Branch) was not available, and therefore, an adjournment application was filed.

7. The said adjournment application was rejected. While rejecting the adjournment application, the trial Court held that, pursuant to an order of the Division Bench of this Court, the trial is time-bound. Since the witness, who had traveled from Pune, was present and insisted on recording his evidence, the Court proceeded to put him in the witness box and record his testimony.

After recording his evidence, the Central Bureau of Investigation (Anti-Corruption Branch), Nagpur, has filed an application under Section 311 of Cr.PC, on the ground that the Court has examined this witness, and necessary facts which are to be brought on record, therefore, they be permitted to recall the witness. However, the Additional Sessions Judge, Khamgaon, rejected the application under Section 311 of the Cr.PC., observing that since the witness was present and the trial is time-bound, the application could not be allowed as it would enable the prosecution to fill up lacuna in its case.

8. Being aggrieved and dissatisfied with the same, the present criminal revision is filed by the Central Bureau of Investigation (Anti Corruption Branch), Nagpur, challenging the order of the Additional Sessions Judge.

9. Learned counsel for the applicant in support his contention placed reliance in the case of *Adan Haji Jama and others Vs The King reported in 1947 SCC OnLine PC 67*, whereas learned counsel for the respondent placed reliance in the case of *Mohd. Husain Umar Kochara vs K.S. Dalipsinghji and another reported (1969)3 SCC 429*.

10. Furthermore, there is no dispute as to the fact that, the trial is time bound by the order of Division Bench of this Court. It is also not disputed that the trial bearing Sessions Case No. 04/2014 is old one. The trial is time bound therefore, the trial Court was bound by the order of this Court and therefore, trial Court insisted to record the evidence of the witness. Admittedly, it is the prosecution case, who has to adduce the evidence in support of the case. At a criminal trial, no Public Prosecutor appeared and the Judge himself examined the prosecution witness. In view of the provisions of Cr.P.C., the Public Prosecutor may appear and plead without any written authority before the Court in view of Section 357 Cr.P.C. [Section 301 of BNSS] before any Court, in which case of which he has charge is under inquiry, trial or appeal.

11. The absence of the prosecutor necessarily involved a breach of Section 226 of the ordinance since he could neither open his case nor examine his witness. It is to be observed, however, that the definition of public prosecutor in the ordinance contemplates that there may be a prosecutor other than the public prosecutor regularly appointed by the State, and it was the prosecutor who has to take charge of the prosecution case and

examine the witnesses as per his choice. He is the architect of his case, and therefore, it is the prosecutor who has to record the evidence by putting the witness in the witness box. Admittedly, the magistrate or the Judge has no such power to examine the witness if the prosecutor is absent.

12. Now, while considering the application under Section 311 of Cr.P.C., it is necessary to see the object of Section 311 of the Cr.P.C. On reading of Section 311 of the Cr.P.C., the widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. The provision clearly states that all that is required for exercising the powers is that such evidence must be essential for a just decision. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case. The power vested under the said provision is made available to any Court may, at any stage of any inquiry, trial, or other proceeding initiated under this Code, summon any person as a witness or examine any person in

attendance, though not summoned as a witness, or recall and re-examine any person already examined. Insofar as recalling or reexamination of any person already examined, the Court must necessarily consider and ensure that such recall or reexamination of any person appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision, and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the court, it is needless to state that the exercise of such power should be made judicially and not arbitrarily.

13. While dealing with an application under Section 311 of Cr.P.C. read with Section 138 of the Evidence Act, the principles to be borne in mind is that :

- (i) Whether the court is right in thinking that the new evidence is needed by it?
- (ii) The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and

speculative presentation of facts, as thereby the ends of justice would be defeated

(iii) 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.

(iv) The exercise of power under Section 311 CrPC 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.

(v) 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.

14. The Hon'ble Apex Court in the case of ***Rajaram Prasad Yadav vs. State of Bihar [(2013) 14 SCC 461]*** in paragraph No.13 considered the provision Section 311 Cr.P.C. along with 138

of the Evidence Act and laid down the guidelines and it is held by referring its earlier judgment in the case of ***Jamatraj Kewalji Govani vs. State of Maharashtra [AIR 1968 SC 178]***, wherein it is held as under :

“It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provides the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction.”

15. While considering the object of the provision, it is observed by the Hon'ble Apex Court that the object underlying Section 311 of the Cr.P.C. is that there may not be failure of justice

on account of a mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused.

16. In the light of the above observations, the provision under Section 311 of Cr.P.C. along with Section 165 of the Evidence Act, is considered to confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant is not unnecessarily brought into record, but something which is relevant is to be brought on record for the just decision of the case.

17. In view of the above observations, the present revision application deserves to be allowed, and therefore, I proceed to pass the following order.

ORDER

- a] The order passed by the Additional Sessions Judge Khamgaon dated 24/01/2024 is hereby quashed and set aside.
- b] The application of the CBI for recalling of the witness is hereby allowed, on condition that the CBI shall secure the presence of the witness before the Court on a fixed date and without seeking any further adjournment. If the witness is unable to attend the proceedings physically, he shall be permitted to appear through video conferencing, and the trial court shall consider the request of his appearance through video conferencing.
- c] None of the parties shall be permitted to seek an adjournment on any ground except exceptional circumstances.

The revision application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]