



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

CRIMINAL REVISION APPLICATION NO.10 OF 2025

Ramesh Kumar Tripathy,
Aged about 56 years, Occupation – Service,
R/o Village Bashira, P.O. Bhojemu,
District Pratapgarh, Uttar Pradesh and
Presently resident of C-3, Officers Colony,
Rajur Colliery, Wani,
District Yawatmal, Maharashtra

...APPLICANT

VERSUS

Central Bureau of Investigation (ACB),
Civil Lines, Nagpur
Maharashtra

...NON-APPLICANT

Ms S. Godbole, Advocate h/f Mr. P.B. Naidu, Advocate for the applicant.
Mr. P. Sathianathan, Special Public Prosecutor for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JANUARY 23, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. By this application, the applicant is seeking quashing and
setting aside of the order passed by the District and Additional Sessions

Judge-1, Kelapur in Sessions Case No.02/2014 dated 26/09/2024 below Exhibit-140/D.

3. The applicant herein is being prosecuted of the offence punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

4. On the basis of complaint lodged by one Suresh Singh with the non-applicant – CBI, Nagpur, the non-applicant claimed to have triggered its investigation and the non-applicant claimed to have verified the aspect of demand of illegal gratification and subsequent that to conducted a raid and the present applicant was found accepting the bribe amount. On the basis of the report and the investigation is completed and charge-sheet was filed. After filing of the charge-sheet, the Special Case No.2/2014 which was conducted before the Special Judge, District and Additional Sessions Judge-1, Kelapur, District Yavatmal.

5. As per the contention of the applicant, initially he has engaged the Counsel who has cross-examined the witnesses including PW-1 - the Sanctioning Officer, Dr. Amrendra Kumar Dubey, PW-2 - the complainant Suresh S/o Mukhtar Singh, Santosh Siddam Shettiwar as PW-3 in the said case.

6. It is contended that the acts under which the applicant is being prosecuted are hyper-technical acts and the applicant being a layman could not understand the gravity of the aspect in which the cross-examination of the witnesses should have been proceeded with and should have been concluded. The gravity of subjecting the witnesses to the material aspects as regards the aspect of verification of initial demand, the theory of the first demand, the analogy of the alleged demand in the course of the trap and subsequent thereto, the genesis of the demand at the time of the alleged acceptance of illegal gratification and as such. The cross-examination was not conducted as to the electronic evidence also, and therefore, on behalf of the applicant the application was filed by the subsequent Counsel contended that the applicant shall be subjected to grave prejudice and the facts as have been narrated necessitates in the interest of justice to afford an opportunity of further cross-examination of the prosecution witnesses on material points and filed the application under Section 311 of the Cr.P.C.

7. Said application is strongly opposed by the Special Public Prosecutor for the CBI on the ground that the permission to recall the witness cannot be granted to fill up the lacuna. It is submitted that the witnesses are cross-examined exhaustively and it is not the fact that the learned Counsel for the applicant was not provided with the electronic evidence or the necessary documents and the new fact is brought to the

notice of the learned Counsel, but the entire charge-sheet was already handed over along with the documents. He was well acquainted with the facts and the evidence which is appearing against the accused, and therefore, there was sufficient opportunity for him to cross-examine the witness. It is also not the case of the applicant that his cross-examination is either restrained by the Court or the opportunity is not granted to him to cross-examine the witness. Thus, after exhaustive cross-examination merely because something remained to be asked is not sufficient to use the discretionary power in favour of the present applicant, and therefore, the application deserves to be rejected.

8. Learned Counsel for the applicant submitted that for the just decision of the case and the accused has to rebut the presumption and in the interest of justice, the witnesses to be recalled to cross-examine these witnesses further on the point of verification of the demand and the electronic evidence. In support of her contention, she placed reliance on the decision of *Hoffman Andreas Vs. Inspector of Customs, Amritsar [2000 (4) Crimes 228]* wherein the facts of the case shows that the case was conducted by previous Counsel who was suffering from mental pressure and was not keeping well and he could not concentrate during the proceedings of the case and as such he failed to cross-examine the prosecution witnesses on material points and the Hon'ble Apex Court has granted permission to recall the witness by observing these aspects. She

submitted that similar is the facts in the present case as the earlier Counsel has not cross-examined the witness on material aspects, and therefore, recalling is necessary for the just decision of the case.

9. *Per contra*, learned Special Public Prosecutor strongly opposed the application and submitted that merely because the Counsel was engaged and he left out some aspects while cross-examining the witness is not sufficient to use the discretion in favour of the applicant. In support of his contention he placed reliance on the decision of this Court in the case of ***Abdul Chapparban Vs. State [2015 SCC OnLine Bom 3730]*** and ***Zahira Habibullah Sheikh & anr. Vs. State of Gujarat & ors. [2006 (3) SCC 374]***. He submitted that in order to find out whether recall of the witness is necessary, there cannot be any straitjacket formula for exercise of such discretion, which is judicial in nature. The court has to find that recall of the witness is necessary for the just decision of the case which is a *sine qua non* for exercise of such discretion. The applicant was duly represented by his Counsel. Sufficient opportunity was granted to him. Merely because he has not cross-examined the witness on material aspects, he cannot be permitted to fill up the lacuna, and therefore, the application rightly rejected by the Additional Sessions Judge, Kelapur. He submitted that this Court while referring the judgment of ***Rajaram Prasad Yadav vs. State of Bihar***

[(2013) 14 SCC 461] wherein after taking a survey of decisions holding the field the Hon'ble Apex Court has held as under :

“From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.PC. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

(a) Whether the court is right in thinking that the new evidence is needed by it?

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) The wide discretionary power should be exercised judiciously and not arbitrarily.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

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

(m) 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.

(n) 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.

10. Before entering into the merits of the case, it is necessary to see the object of Section 311 of the Cr.P.C. On reading of Section 311 of 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 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 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 necessary 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 exercise of such power should be made judicially and not arbitrarily.

11. While considering the object of the provision it is observed by the Hon'ble Apex Court that the object underlying Section 311 of the Code is that there may not be failure of justice on account of 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.

12. In the judgment of Zahira Habibullah Sheikh & anr. Vs. State of Gujarat & ors. (supra) relied upon by the learned Special Public Prosecutor wherein it is observed by the Hon'ble Apex Court that while considering the principles of rule of law and due process, the provision under Section 311 of Cr.P.C. it is held that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as *persona non grata*. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due

administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves.

13. In the light of the above observations, if the provision under Section 311 of Cr.P.C. along with Section 165 of the Evidence Act is considered confers vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. At the same time, such discretion is to be used judicially and not arbitrarily. While using the discretion the parties shall not be permitted to fill up the lacuna. In the light of the principles to be kept in mind while appreciating the facts and circumstances of the present case, the witnesses which the applicant's Counsel intending to recall are already examined before the Court and they are cross-examined exhaustively. Merely because something remained to be asked or some points remained to be cross-examined is

not sufficient to permit the parties to recall the witness. In order to find out whether recall of the witness is necessary there cannot be any straight jacket formula to exercise of such discretion, which is judicial in nature. The Court has to find that recall of the witness is necessary for the just decision of the case which is a *sine qua non* for exercise of such discretion.

14. In the present case, merely because on some points cross-examination is not conducted is not sufficient or the earlier Counsel has not cross-examined the witness on some of the issues is not sufficient to recall the witness. It is not the case that opportunity of cross-examine the witness is not given to the learned Counsel of the applicant. Thus, the test would be whether such recall is necessary for the just decision of the case. Here considering the grounds raised in the application, I do not find that it is essential for the just decision of the case, and therefore, I do not find any merits in the application. Hence, the revision application deserves to be dismissed.

15. Accordingly, the application is dismissed.

(URMILA JOSHI-PHALKE, J.)