



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

CRIMINAL WRIT PETITION NO.128 OF 2025

SANJIVANI SUNIL BARMATE
VS
SUBHASH SUDHIR BISWAS

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr.C.D. Thamke, Advocate for the petitioner/s
Mr. P.N. Upadhye, Advocate for the respondent-sole

CORAM : ANIL S. KILOR, J.

DATE : 07th FEBRUARY, 2025

1. The application under Section 311 of the Code of Criminal Procedure filed by the petitioner to examine earlier Advocate, who allegedly failed to bring the legal heirs of the complainant on record, after the death of the complainant on 03.06.2024.

2. The purpose for which the petitioner wants to examine the earlier Advocate, is to bring on record the fact that though he had knowledge about the death of complainant, he did not submit the necessary documents in that respect on record and failed to bring the legal heirs of the complainant on record.

3. The learned trial Court vide order dated 29.11.2004 rejected the application on the ground that no reason is mentioned in the application, as to why the complainant wants to examine the earlier Advocate and therefore, the learned Judicial Magistrate First Class found it not necessary and essential for the just decision, to examine the said

witness.

4. The learned Additional Sessions Judge, Nagpur in Criminal Revision Application No.07 of 2025 maintained the order of the learned Judicial magistrate First Class, Kamptee vide order dated 18.01.2025. Hence, this petition.

5. Section 5 of the Indian Evidence Act says that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as declared to be relevant, and of no others.

6. The 'facts in issue' means and includes, any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

7. Thus, considering the purpose for which the petitioner wants to examine the previous Advocate, it clearly shows that the petitioner does not want to lead evidence in relation to the facts in issue or any relevant fact.

8. In the circumstances, in view of Section 5 of the Indian Evidence Act, the prayer for examining the previous Advocate cannot be accepted and it was rightly rejected by both the Courts-below. In the circumstances, no interference is warranted. Accordingly, the writ petition is **dismissed**.

(ANIL S. KILOR, J.)