



Judgment

440 wp504.25

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

CRIMINAL WRIT PETITION NO.504 OF 2025

Tryambak Sonrao Bade,
aged: 78 years, occupation: agriculture,
r/o Umbar Muli, post Loni, taluka Shirur
Bazar, district Beed. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra,
through PSO,
Malegaon Police Station,
taluka Malegaon and district Washim.

2. Umakant s/o Nilkantrao Ghuge,
aged 64 years, occupation: agriculturist.

3. Gajanan s/o Motiram Ingle,
aged 57 years, occupation: agriculturist.

4. Balu @ Balwant Baban Dhakne,
aged 42 years, occupation: agriculturist.

Nos.1 to 3 all r/o Pangrabandi,
tahsil Malegaon, district Washim. **Respondents.**

Shri U.J.Deshpande, Counsel for the Petitioner/Complainant.
Shri V.A.Thakare, Additional Public Prosecutor for Respondent
No.1/State.
Shri Shyam Dewani, Counsel for Respondent Nos.2 to 4.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 09/07/2025

PRONOUNCED ON : 28/07/2025

JUDGMENT

1. By this writ petition, the petitioner/complainant has challenged order passed below Exh.226 by learned Sessions Judge at Washim in Sessions Trial No.70/2012 whereby the application filed by prosecution under Section 311 of the CrPC has been partly allowed by recalling of the witnesses.

2. Heard learned counsel Shri U.J.Deshpande for the petitioner/complainant, learned Additional Public Prosecutor Shri V.A.Thakare for the State, and learned counsel Shri Shyam Dewani for respondent Nos.2 to 4.

Rule. Heard finally by consent.

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3. Learned counsel for the petitioner/complainant submitted that the petitioner/complainant lodged a report against the accused persons alleging that they caused death of his son due to the previous enmity. After completion of the investigation, chargesheet was filed and the prosecution has examined as many as 42 witnesses. The prosecution has filed application below Exh.226 under Section 311 of the CrPC for recalling of witnesses Gajanan Thakre, Vasant Kalambkar, Shrikrishna Joshi, Balu Ingle, and Baban Ghuge. The said application was strongly opposed by the accused persons on the ground that the investigating officer is already examined and without any good and valid reason, on non-examination of those witnesses, now, the application is filed by the prosecution to prolong the matter. After hearing both the sides, learned Sessions Judge allowed the application partly on the ground that the prosecution

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has not given specific reason for recording evidence of Vasant Kalambkar, who is not cited as witness in chargesheet, and Baban Ghuge, who is already examined.

4. Being aggrieved and dissatisfied with the same, the present writ petition is filed by the petitioner/complainant on the ground that witness namely Vasant Kalambkar, being Motor Vehicle Inspector, is important witness to be examined to prove case of the prosecution since the entire story of the prosecution revolves around vehicle viz. Gypsy from which dead body of the deceased was recovered in doubtful circumstances and, therefore, examination of said Motor Vehicle Inspector is required for just decision of the case.

5. Learned Additional Public Prosecutor for the State, endorsed the said contentions made by learned counsel for the petitioner/complainant and submitted that the

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entire case is based on circumstantial evidence. The allegations against the accused persons are that the deceased died as his vehicle was dashed by another vehicle. During investigation, it revealed that there was business rivalry between the accused persons and the deceased and on that count, the deceased was eliminated. Thereafter, to screen themselves from the punishment, the vehicle was set on fire. The said vehicle is owned by one of accused persons. During investigation, the vehicle was examined by the Motor Vehicle Inspector and report is on record. For just decision of the case, examination of said witness Vasant Kalambkar, being Motor Vehicle Inspector, is required as he is an important witness.

6. Learned counsel for respondent Nos.2 to 4 filed an intervention application and challenged maintainability

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of the writ petition as alternate remedy is available. The another ground raised is that the sessions trial is pending since 2012. However, by the order of this court, the trial is already expedited. Filing of this writ petition, is nothing but tactics to prolong the matter. In view of that, the writ petition deserves to be dismissed.

In support of his contentions, learned counsel for respondent Nos.2 to 4 placed reliance on following decisions:

1. **Rajendra Diwan vs. Pradeep Kumar Ranibala and anr**, reported in (2019)20 SCC 143;
2. **Mohd.Yunus vs. Mohd.Mustaqim and ors**, reported in (1983)4 SCC;
3. **Sundeeep Kumar Bafna vs. State of Maharashtra and anr**, reported in (2014)16 SCC 623.

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7. Having heard both the sides and perused the record, there is no dispute as to the fact that the prosecution has already examined several witnesses including the investigating officer. The application was filed by the prosecution to recall the witnesses on the ground that examination of these witnesses is required for just decision of the case.

8. Learned counsel for the petitioner/complainant invited my attention to Section 311 of the CrPC and submitted that purpose and object of the said Section require to be taken into consideration by which widest of powers have been invested with courts when it comes to question of summoning a witness or to recall or re-examine any witnesses already examined.

9. In the case of **Rajaram Prasad Yadav vs. State of Bihar, reported (2013) 14 SCC 461**, after taking a survey

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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.P.C. 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

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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

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examination in order to arrive at a just decision of the case.

(h) The object of Section 311 Cr.PC. 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

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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.

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(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 object of Section 311 of the Cr.P.C.

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11. Reading of Section 311 of Cr.P.C. shows that 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 of the case. 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

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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.

12. 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

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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 provided 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.”

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13. 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. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311, the significant expression that occurs is 'at

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any stage of inquiry or trial or other proceeding under this Code'. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

14. In another judgment **Zahira Habibullah Sheikh & anr. Vs. State of Gujarat & ors. 2006 (3) SCC 374**, while considering the principles of rule of law and due process, the Hon'ble Apex Court has also considered the provision under Section 311 of Cr.P.C. and 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

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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 nongrata. 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

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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.

15. In the light of the above observations, if the provisions under Section 311 of the Cr.P.C. along with Section 165 of the Evidence Act are considered, it would show that it 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. 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. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any

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stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. Thus, the discretion is given to the Court to permit either to the parties or at its own to use the said provision to examine or recall any witness for the just decision of the case. It is to be done with an object of getting the evidence in aid of a just decision and to uphold the truth.

16. In the light of the said observations of the Hon'ble Apex Court and in the given set of facts and circumstances, witness namely Vasant Kalambkar is the material witness who was serving as Motor Vehicle Inspector at Washim at the relevant time. The inspection report is also on record.

Insofar as witness Gajanan Thakre is concerned, he is already examined and for what purpose his further

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examination is required, is not mentioned in the application.

As such, examination of witness Vasant Kalambar requires to be allowed considering the gravity of the offence.

17. Admittedly, the sessions trial is pending since 2012, i.e. more than 13 years and, therefore, some conditions require to be imposed on both the parties.

18. In view of the discussion above, the writ petition deserves to be allowed, as per order below:

ORDER

(1) The Criminal Writ Petition is **partly allowed**.

(2) The order passed below Exh.226 by learned Sessions Judge at Washim in Sessions Trial No.70/2012 is hereby

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quashed and set aside, in respect of witness Vasant Kalambkar only.

(3) The prosecution is permitted to record the evidence of said Vasant Kalambkar within two weeks from the date of receipt of writ of this order.

(4) It is expected that the prosecution and the defence shall cooperate to complete the evidence of the said witness and learned Sessions Judge shall dispose of the trial at the earliest.

Rule accordingly. Petition stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!