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

CRIMINAL WRIT PETITION NO.655 OF 2025

Dilip s/o Bhaurao Pachpohar,
Aged about 69 Years,
Occupation : Nil,
R/o Khadka, Taluka Warud,
District Amravati.

.... PETITIONER

// VERSUS //

State of Maharashtra,
through Police Station Officer,
Police Station, Benoda,
Amravati (rural),
District Amravati.

.... RESPONDENT

Mr. T. U. Tathod, Counsel for the petitioner.
Mr. A. J. Gohokar, APP for the respondent /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07.08.2025

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. By consent of parties, heard finally.
2. By preferring this writ petition, the petitioner has challenged the impugned order dated 21.09.2024 passed by the learned District Judge – 1 and Additional Sessions Judge, Warud below Exh. 43 in Sessions Case No.6/2023, rejecting the application for recalling of the prosecution witness No.4 and seeking permission to cross examine PW-4 Ravindra Dandare.

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3. The brief facts which are necessary for the disposal of the present writ petition is as under:

The wife of the petitioner namely, Kamla Dilip Pachpohar has lodged the report with the police alleging therein that the petitioner had assaulted her son namely, Dinesh Pachpohar by means of axe and he sustained grievous injuries. On the basis of the said report, the crime No.169/2020 was initially registered under Section 307 of the Indian Penal Code, subsequently, due to the death of the injured it was converted under Section 302 of the Indian Penal Code (for short 'the IPC'). The charge came to be framed on 04.02.2021 and the matter was posted for the recording of the evidence. Three witnesses are already examined and on 15.06.2024, the matter was posted for recording the evidence of PW-4 Ravindra Dandare. Since the Counsel appearing in the matter was out of station, the application for grant of adjournment was moved below Exh.39 and the same is rejected. The PW-4 was examined and the learned Additional Sessions Judge has passed the no-cross order against the petitioner. The petitioner has moved an application under Section 311 of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of permission to cross-examine PW-4 by recalling the said witness vide Exh.43. However, the learned Additional Sessions Judge has not considered the same and rejected the application.

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4. Heard learned Counsel for the petitioner, who submitted that it was a first time the Counsel remained absent and filed an adjournment application. There was no attempt at any point of time by the Counsel of the petitioner to adjourn the matter, but the learned Sessions Judge has not considered the same. The petitioner is facing the serious charges under Section 302 of the IPC and for the just decision of the case, an opportunity is to be granted to the present petitioner to cross-examine the witness. The principle laid down under Section 311 of Cr.P.C. is that if it is required for the just decision of the case, the witness is to be recalled. 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. 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. In support of his contention, he placed reliance on ***Rajaram Prasad Yadav vs. State of Bihar and another*** reported in **(2013) 14 SCC 461**.

5. Per contra, learned APP strongly opposed for the same and submitted that despite the sufficient opportunity, the cross-examination was not carried out. The learned Counsel for the petitioner was absent. The petitioner is under trial and therefore,

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the trial Court is under obligation to dispose of the trial expeditiously, and therefore, the application is rejected. There is no illegality in the order, and therefore, the application is rightly rejected by the Court and no interference is called for.

6. On going through the entire submissions and before entering into the merit of the case, it is necessary to see the object of Section 311 of 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 reexamine 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

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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.

7. While dealing with an application under Section 311 of Cr.P.C. read with Section 138 of the Indian 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 reexamine 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.

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8. The Hon'ble Apex Court in the case of **Rajaram Prasad Yadav vs. State of Bihar and another** (referred supra) in paragraph No.13 considered the provision Section 311 Cr.P.C. along with 138 of the Indian 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 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."

9. 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

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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.

10. 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. 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.

11. Considering the gravity of the offence and considering the fact that, besides the direct evidence of the witnesses, the prosecution placed reliance on the statements of various witnesses, an opportunity is to be granted to the accused to cross-examine the witnesses and rebut the case against him. In order to that the proper opportunity for the just decision of the case is required to be given to the accused/petitioner and therefore, the petition deserves to be allowed. Therefore, I proceed to pass following order:

ORDER

(i) The petition is allowed.

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(ii) The order dated 21.09.2024 passed by the learned District Judge – 1 and Additional Sessions Judge, Warud, below Exh.43, is hereby quashed and set aside.

(iii) The learned District Judge – 1 and Additional Sessions Judge, Warud, shall permit the accused/petitioner to recall the witness and cross-examine the witness.

With this, writ petition is disposed of.

Rule is made absolute in the above said terms.

(URMILA JOSHI-PHALKE, J.)

Sarkate.