



Judgment

Cr.WP-720-2025

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

CRIMINAL WRIT PETITION NO. 720 OF 2025

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- 1] Chaban s/o Pandurang Pachare,
Aged about 50 years, Occ-Nil,
R/o Ramnagar Colony, Jawaharnagar Ward No. 10,
Taq - Rajura, District- Chandrapur.
- 2] Narendra s/o Laxman Virulkar,
Aged about 50 years, Occ-Nil,
C/o Ramnagar Colony, Jawaharnagar Ward No.10,
Taq - Rajura, District- Chandrapur.
- 3] Nita @ Kalpana Mahadeorao Thakre,
Aged about 54 years, Occ-Nil,
R/o Ramnagar Colony, Rajura,
Taq – Rajura, District- Chandrapur.

... **PETITIONERS**

- - V E R S U S - -

State of Maharashtra,
Through its Police Station Officer,
Police Station Rajura,
Taq- Rajura, District – Chandrapur.

... **RESPONDENT**

Mr. Sangram Sirpurkar, Advocate for the Petitioners.

Ms. S.V. Kolhe, A.P.P. for the Respondent/State.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 17, 2025.

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. The present petition is filed under Article 227 of the Constitution of India, challenging the order dated 27/06/2025, passed in Special POCSO Case No. 29/2019 by the learned Additional Sessions Judge/Special Judge, Chandrapur, whereby the application filed under Section 311 of the Code of Criminal Procedure for recalling certain prosecution witnesses was rejected.

3. Brief facts of the case are that:

The prosecution case arises from an incident reported

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on 06/04/2019, when the informant received a phone call from the Warden of the Girls Hostel at Infant Jesus Public School, Rajura, District Chandrapur, informing that two girls from the hostel were unwell. The informant visited the hospital and found that the girls were receiving treatment and complained of dizziness. Subsequently, a letter was received from the Principal of the said school stating that the girls had been referred to the Government Hospital, Chandrapur.

4. On 12/04/2019, the medical reports indicated possible sexual abuse, prompting the informant to lodge a report against unknown persons. During investigation, the victim girls disclosed incidents implicating several persons including the present petitioners. Accordingly, offence was registered under various sections of the Indian Penal Code, 1860, Protection of Children from Sexual Offences Act, 2012, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Maharashtra Prevention and

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Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. The petitioners were arrested on 16/04/2019 and are under trial prisoners since then. The investigation culminated in the filing of a charge-sheet on 08/06/2019, and the case was committed to the Sessions Court. Evidence of prosecution witnesses was recorded, and the matter proceeded to the stage of recording statements under Section 313 CrPC. While preparing for the final arguments, the defence counsel noticed certain contradictions in the evidence of PW 61 (Dr. Rahul Bhongale) with which PW 76 was not confronted (Investigating Officer) and similarly there were contradictions in the evidence of PW 65 regarding which PW 20 was not confronted, due to an oversight. An application was therefore filed under Section 311 CrPC seeking recall of these witnesses for limited cross-examination, which came to be rejected by the trial court on 27/06/2025. Aggrieved by the said rejection, the petitioners have approached this Court invoking its supervisory

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jurisdiction, seeking limited recall of the witnesses to confront them with material contradictions for the purpose of fair adjudication of the case.

5. The learned counsel for the petitioners submits that, in order to ensure a fair trial, it is necessary to cross-examine P.W.-76, as there are material contradictions in the cross-examination of P.W.-61 regarding which P.W.-76 was not confronted by the counsel for the accused. He further submits that, due to inadvertence on the part of the counsel, these contradictions were not brought on record. Accordingly, it is urged that P.W.-76 be recalled for this purpose. The learned counsel also submits that P.W.-20 was examined before P.W.-65. He further submits that these two witnesses deposed contradictorily to each other, and therefore, it is necessary to recall P.W.-20 for cross-examination as well. The learned counsel relies on the Judgment in the case of *Rajaram Prasad Yadav VS State of Bihar and Another, (2013) 14 SCC 461*, and

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also in the case of *State VS N.Seenivasagan, (2021) 14 SCC 1*.

6. On the other hand, the learned A.P.P. submits that inadvertence on the part of the counsel is not a valid ground to recall a witness under Section 311 of the Code of Criminal Procedure. Sufficient opportunity was granted to the learned counsel for cross-examination of P.W.-20 and P.W.-76 and permitting such a request would lead to an endless process. Additionally, she contends that Section 311 of the Code of Criminal Procedure was framed for a different purpose, and not to fill in any lacunae in the case. The said power can be exercised by the Court to summon any person as a witness at any stage of the trial, or to recall or re-examine a witness, if the evidence of such witness appears to it to be essential to the just decision of the case. However, she submits that this is not the situation here. The application was filed only to protract the trial, as the trial is at the fag end and only the statement under Section 313 of the Cr.P.C. remains to be recorded. Under such

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circumstances, she submits that the Trial Court has provided detailed reasoning while rejecting the application at Exh.-920 filed by the petitioners. She relies on the judgment of the Supreme Court in the case of *Neha Begum & Ors. VS. The State of Assam & Anr.*, (Special Leave to Appeal No. 3910/2024).

7. Upon hearing the learned counsel for the petitioners and the learned A.P.P., it appears that the application at Exh.-920 was filed by the counsel for accused Nos.2 & 3, seeking to recall P.W.-20 and P.W.-76 for further cross-examination. The petitioners raised the ground that, due to inadvertence on the part of the counsel, contradictions in the cross-examination of P.W.-61 were not confronted to P.W.-76, who is the Investigating Officer. So as to get it exhibited as the statement under Section 161 Cr.P.C. of P.W.-61 was recorded by P.W.-76. Further, regarding recalling of P.W.-20, as he was examined at an earlier stage than P.W.-65, and as both these witnesses have contradicted each other, and under such

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circumstances, questions need to be put to P.W.-20. Based on these reasons, the application was filed to recall P.W.-20 and P.W.-76 for further cross-examination.

8. Section 311 of the Code of Criminal Procedure ensures that the Court must arrive at a just and correct decision by obtaining a clear picture of the facts. For this purpose, the Court may examine any witness at any stage. If the evidence of such a witness appears to it to be essential to the just decision of the case, meaning thereby powers should be exercised judiciously and also with extreme care and caution.

9. A perusal of the evidence of P.W.-20, along with the further cross-examination conducted by the Advocate for accused Nos.2 & 3, shows that he was cross-examined at length. Similar is the position regarding P.W.-76. Therefore, it is clear that sufficient opportunity was granted to the learned Advocate appearing on behalf of the respondent Nos.2 & 3 to cross-

examine both P.W.-20 and P.W.-76.

10. As the learned counsel for the petitioners have relied on the judgment of the Supreme Court in the case of *Rajaram Prasad Yadav (supra)*, in paragraph No.17, the Supreme Court has culled out parameters/guidelines with respect to Section 311, which are as follows:-

“17. 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:

17.1 Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

17.2 The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

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17.3 *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.*

17.4 *The exercise of power under Section 311 Cr.P.C. 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.*

17.5 *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.*

17.6 *The wide discretionary power should be exercised judiciously and not arbitrarily.*

17.7 *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.*

17.8 *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.*

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17.9 *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.*

17.10 *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.*

17.11 *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.*

17.12 *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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17.13 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.

17.14 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.”

11. After reviewing the parameters laid down by the Supreme Court, it is abundantly clear that the discretionary power under Section 311 of the Criminal Procedure Code (Cr.P.C.) must be exercised judiciously and not arbitrarily. The provision further postulates that if the evidence of any witness appears to the Court to be essential to the just decision of the case, the power under the section should be exercised. Not only that, if the additional evidence is needed, the witness should be

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summoned or recalled. It is further held that 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. However, while exercising such power it was held that, the Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results, and likewise, the Supreme Court has laid down these guidelines. Keeping in mind these parameters, as discussed above, recalling of P.W.-20 and P.W.-76 is nothing but an attempt to protract the trial.

12. If the application at Exh.-920 is perused, it only refers to the inadvertence on the part of the advocate, which cannot form the basis to recall the witness. It would be useful to refer to the judgment in the case of *Neha Begum* (supra). The Supreme Court, while considering the scope of Section 311, held that the powers under Section 311 cannot be exercised to fill in the lacunae. Further, it was held that lawyer engaged by

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the petitioners did not conduct proper cross-examination of the witnesses cannot be considered to be a valid ground for the trial court to invoke power under Section 311 Cr.P.C. It is to be noted that the trial is at the fag end and the matter is fixed for recording of the statements under Section 313 of the Cr.P.C. The impugned order deals with the effect of Section 162, so also, Section 145 of the Evidence Act. Not only that it has also considered Section 161 of the Cr.P.C. and a detailed reasoning has been provided by the Trial Court. Ultimately, the Trial Court has relied upon the judgment of the Supreme Court in the case of *A.G. VS. Shiv Kumar Yadav & Anr., (Criminal Appeal Nos. 1187-1188 of 2015)*, which lays down important guidelines so far as Section 311 is concerned to substantiate its decision.

13. Even otherwise, no prejudice would be caused to the accused if P.W.-20 and P.W.-76 are not recalled, and therefore, the Trial Court has appreciated all the submissions and by a

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detailed and reasoned order rejected the application. It was also brought to my notice that, this Court in Criminal Appeal No.384/2023 filed by present respondent No.3-Nita @ Kalpana Mahadeorao Thakre, in Paragraph No.3, held that *“The learned trial Court shall make every endeavour to dispose of the trial within two months by keeping the matter on day to day basis. If the matter is not disposed of within two months, the liberty is granted to the present applicant to approach this Court for grant of bail.”* Therefore, considering the above facts and circumstances, and as discussed above, there is no merit in the petition. Hence, the following order:

ORDER

- (i) The Criminal Writ Petition is **dismissed**.
- (ii) Rule stands discharged.

[**M. M. NERLIKAR, J**]