



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

CRIMINAL WRIT PETITION NO. 934 OF 2025

Virendra s/o Gopichand Khiyani and Ors.
Vs.

State of Maharashtra, Thru. PSO, PS Hinganghat, Tah. Hinganghat, Distt. Wardha

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.B. Gandhe, Advocate for petitioners.
Mr. A.M. Joshi, APP for respondent/State.

CORAM : M.M. NERLIKAR, J.

DATE : 26.11.2025

P.C.

Issue Rule returnable forthwith. Heard the
learned counsel appearing for both the parties.

2. The petitioner raised an issue that without confronting the statements under Section 164 of the Code of Criminal Procedure (for short 'Cr.P.C) to the accused, the statement was exhibited at the fag end and that too without hearing the petitioners and before the pronouncement of the judgment. Pursuant to which, the petitioner filed an application for recalling the order passed by the Trial Court by which the statement recorded under Section 164 Cr.P.C. was exhibited on 04.11.2025. The same was rejected which is challenged in the present petition.

3. The learned counsel appearing for the petitioner vehemently submitted that after entire evidence was over and further after recording of statement under Section 313 Cr.P.C., the statements recorded under Section 164 were exhibited. He further points out from the application that the judgment was to be delivered on 10.10.2025, However, on the aforesaid date it was not delivered, again the matter was fixed for judgment on 17.10.2025, on that date also, it was not delivered and the matter was adjourned to 29.10.2025. Further on 29.10.2025 though the case was fixed for pronouncement of judgment, the judgment was not pronounced and the matter was adjourned on 04.11.2025. It was expected that the judgment will be pronounced on 04.11.2025, however, without pronouncing the judgment, the Trial Court has exhibited Section 164 statements of Govindram Khiyani and Aashish Khayni, and marked them at Exhibit 344 and 345 respectively. He further submits that Section 164 statement is having limited use either to corroborate or contradict the witness however, without giving an opportunity to the petitioners, the Trial Court ought not to have exhibited Section 164 statement. Therefore, the petitioners were constrained to file application for recalling of the order dated 04.11.2025 passed by the learned Trial Court to exhibit Section 164 statements as Exhibit 344 and 345 respectively.

4. The learned APP conceded the fact that at an earlier point of time Section 164 statements were not exhibited. He further submitted that those statements were not confronted to the witnesses which can be gathered from the deposition which are annexed with the petition at Exhibit 2 collectively. He submit that infact after recording Section 313 statements, the mater was kept for pronouncement of judgment, the trial Court ought not to have exhibited Section 164 statements. This fair submission by the learned APP is appreciated.

5. Upon hearing the learned counsel for the petitioner as well as the learned APP for the respondent/State, it appears from the record that petitioner has preferred an application for recalling of the order dated 04.11.2025 on the ground as stated supra.

6. Upon perusal of the impugned order dated 12.11.2025 passed in Special Case No.85/2019 below Exhibit 346, in the reasoning part, the Court has observed that no order was passed on Exhibit 1, to exhibit the statement of witnesses recorded under Section 164 of Cr.P.C. It further appears that on the same day additional statements of accused under Section 313 of the Cr.P.C. was recorded. Putting the questions to the accused in respect of Section 164 statements of witnesses of Govindram Khiyani and Aashish Khiyani. It further appears that the

Court has observed that there is no separate order passed for exhibiting the statements and therefore, those two statements are marked as Exhibits.

7. It is further observed by the Trial Court that statement recorded under Section 164 of Cr.P.C. is admissible in evidence and no formal proof or examination of Magistrate who recorded it is necessary. The statements are treated as public documents and therefore, those statements are marked as Exhibits. The said statements were exhibited only for the reason that those are part of the record and there should not be any incriminating circumstance which is not put to the accused while recording statement under Section 313 of the Cr.P.C. and therefore, the additional statements are also recorded of the accused persons under Section 313 of the Cr.P.C.

8. Upon perusal of the entire record and the impugned order, admittedly the case was adjourned from time to time for judgment as refereed supra. Exhibiting a document is an important factor and the documents can be exhibited only after giving an opportunity to all the parties and proving the same. It is a cardinal principle of law that for a fair trial an opportunity should be given to all the parties. It appears from the record that after going through the depositions of the witnesses, the statement recorded under Section 164 of Cr.P.C. is not at all

confronted. Though sufficient opportunity was available to the prosecution however, for the reasons best known to the prosecution, the witnesses were not confronted with the statements.

9. Under such circumstances, merely being a public document or no formal proof being required that by itself is not sufficient to exhibit those documents. Admissibility of Section 164 statement is only to the limited extent as could be gathered from catena of judgments which can be used only for the purpose of corroboration or for contradiction. Besides this, the Hon'ble Supreme Court in categorical term has stated that conviction cannot be based on Section 164 statement alone. By exhibiting the statements under Section 164 of the Cr.P.C. without giving an opportunity to the accused persons is denial of opportunity of hearing. Further, the statements recorded under Section 164 of the Cr.P.C. is exhibited with a view that there should not be any incriminating circumstance which is not put to the accused while recording statement under Section 313 of the Cr.P.C. Infact it is the prosecution who has to prove his case and stand on his own footing. If the prosecution does not want to rely on a specific document, under such circumstances, it is not expected from the Court even if, the said document is part of the charge-sheet to exhibit and rely on the same. There may be 'n' number of

documents which comes up in the investigation and therefore, it is not necessary to exhibit, each and every document unless those document are relied and proved by the prosecution or rather it is confronted to the accused persons. If this is to be permissible then there would be a mockery of justice. The said procedure has been established with a view that all the parties should be adhere to the procedure established by law.

10. Admittedly, the statements recorded under Section 164 of the Cr.P.C. cannot be used as a substantive piece of evidence. It is a settled principle of law that it can only be used for the purpose of contradiction and corroboration as was observed by the Hon'ble Supreme Court in the case of ***R. Shaji Vs. State of Kerala***, reported in ***4 SC (Cri) 185***, which reads thus:

“wherein it is held that a preposition to the effect that if a statement of witness is recorded under Section 164 or Cr.P.C., his evidence in Court should be discarded is not at all warranted. It it further observed that Section 157 of Evidence Act makes it clear that a statement recorded under Section 164 or Cr.P.C. can be relied upon for the purpose of corroborating statements made by witness in the Committal Court or even to contradict the same. As the defence had no opportunity to examine the witnesses whose statements are recorded under Section 164 or Cr.P.C., said statements cannot be treated as substantive evidence.”

11. It is to be noted that so far as Section 313 statements of the accused persons are concerned, those are recorded on 20.09.2025 and 22.09.2025 and thereafter, the matter was closed for judgment. Recalling of accused again for additional statement under Section 313 of Cr.P.C. is not at all warranted in the present case as Section 164 statement recorded is not confronted to the witnesses. Therefore, the Trial Court has committed gross error by exhibiting those statements recorded under Section 164 of the Cr.P.C. of Govindram Khiyani and Aashish Khiyani.

12. For the aforesaid reasons, hence, I pass the following order :

ORDER

- i) The petition is allowed.
- ii) The impugned order dated 12.11.2025 passed below Exhibit 346, by the learned Additional Sessions Judge, (Court No.1), Hinganghat, in Special Case No.85/2019 is hereby quashed and set aside.
- lii) The documents at Exhibits 344 and 345 are de-exhibited.

13. Rule is made absolute in the aforesaid terms.

(M.M. Nerlikar, J.)