



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

CRIMINAL WRIT PETITION No.588 OF 2024

Ritik s/o. Dhannuprasad Mazi,  
24, Occupation Private,  
R/o. 585, Ashirwad Nagar,  
Lane No.6, Sakardara, Nagpur. : PETITIONER

...VERSUS...

State of Maharashtra,  
Through PSO, Police Station Hudkeshwar,  
Distt. Nagpur. : RESPONDENT

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Mr. A.C. Jaltare, Advocate for Petitioner.  
Mr. V.A. Thakare, Addl. Public Prosecutor for Respondent/State.  
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CORAM : URMILA JOSHI-PHALKE, J.  
DATE : 22<sup>nd</sup> JANUARY, 2025.

ORAL JUDGMENT :

1. By this writ petition the petitioner has challenged the order passed below Exhibit-201 whereby the application of the present petitioner filed under Section 311 of the Code of Criminal Procedure is rejected for recalling of the witnesses PW 18 and PW 1.
2. Rule. Rule made returnable forthwith.
3. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent-State with consent for disposing the

petition finally.

4. The present petitioner is one of the accused who is facing charge under Section 302 read with Section 34 of the Indian Penal Code and under Section 427 of the Arms Act read with Section 135 of the Maharashtra Police Act in connection with Crime No.210/2020.

5. After framing of the charge prosecution has examined in all 20 witnesses. As per the case of the prosecution PW 1 Sumant Suresh Murte, brother of Vaibhav, has lodged report about the incident at Hudkeshwar Police Station, Nagpur. The prosecution has also examined PW 18 Suvarna Mohanrao Thanekar who alleged to be eye witness and whose statement was recorded after three days. As per the contention of the petitioner PW 18 was portrayed as independent witness though she is a chance witness, but it was shown that she is an independent witness. However, after obtaining the information under the Right to Information Act it revealed that she is closely related to the family of the complainant. Thus, she is an interested witness and, therefore, her evidence that she came to know about the incident after she watched the UCN news appears to be suspicious though she is cross-examined but as this fact was not known to the accused, said aspect remained to be cross-examined and, therefore, the opportunity is to be granted to the defence counsel to cross-examine PW 1 as well as PW 18 on this aspect. It is further submitted that she is the sole eye witness as per the prosecution and, therefore, her evidence is utmost important. The life and

liberty of the present accused and the other co-accused is in question. In view of that, the defence be permitted to recall the witness by setting aside the order of the Sessions Judge.

6. Heard learned counsel Mr. A.C. Jaltare, for the petitioner. He submitted that for the just decision of the case the recalling of the witness is necessary. It is not that the accused are prolonging the trial or trying to fill up the lacuna. It is only for the just decision of the case that opportunity is required and no prejudice would be caused to the prosecution by recalling the said witness.

7. Learned Additional Public Prosecutor for the respondent-State strongly opposed the said application and submitted that use of Section 311 of the Criminal Procedure Code wherein the expression “may” postulates that the power can be exercised at any stage of inquiry trial or other proceedings. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression “shall” summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Essentially of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory. Power to summon witness is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which it can be exercised

or the manner of its exercise. He submitted that it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. He submitted that the ground raised by the accused-applicant is that the witness subsequently as per the information received appears to be an interested witness and the said fact can be proved through the other evidence also, therefore, recalling of the said witness is not at all essential and, therefore, the order passed by the learned Sessions Judge is proper and legal one and no interference is called for.

8. After hearing learned counsel for the petitioner and the learned Additional Public Prosecutor for the State, perused the entire record, from which it reveals that as per the allegations against the present petitioner and the other accused that they in furtherance of their common intention committed murder of Vaibhav Murte by assaulting him by means of sharp weapon. The entire case revolves around the solitary eye witness PW 18 who is already examined and cross-examination is also conducted. As per her evidence she has witnessed the said incident and she came to know about the death of the deceased when she watched the news on UCN channel and, therefore, she approached to the Police and her statement was recorded. Learned counsel pointed out that after her cross-examination the accused has obtained information about her parents and other family members and it revealed to the accused that she is closely related to the

complainant and the deceased. Thus, she is interested witness and, therefore, to bring that aspect before the Court her further cross-examination is required. In view of that, they prayed for recalling of the witness. Learned Sessions Judge has considered this aspect, but rejected the application on the ground that Section 311 cannot be used for filling up the lacuna. The witness can only be recalled if there are tangible reasons to show how fair trial could suffer without such record and, therefore, the application is rejected.

9. Section 311 of the Code of Criminal Procedure which deals with recalling of the witness. Section 311 of the Code of Criminal Procedure states about the power of the Court to summon material witness or examine person present. It states that any Court may at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or to examine any person in attendance, though not summoned as a witness; recall and re-examine any person who has already been examined and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Thus, Section 311 states about the power of the Court and the Court is amply empowered to summon any person as a witness or to examine any person in attendance though not summoned as a witness and recall and examine any person who has already been examined. This power can be exercised at any stage of any inquiry, trial or other proceeding under the Code. The latter part of Section 311 states that the Court “shall” summon

and examine or recall and re-examine any such person' if his evidence appears to the Court to be essential to the just decision of the case.' Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth. The Hon'ble Apex Court in **Ratanlal Vs. Prahlad Jat**, reported in **(2017) 9 SCC 340** dealt with this issue and observed, "in order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order."

Thus, "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 of 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 the 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 any stage of any inquiry or trial or other proceeding under this Code”

10. Thus, in view of the object which is underlined under Section 311 that power is to be exercised judicially and not arbitrary. As far as the case in hand is concerned the learned counsel has pointed out from the documents that initially the documents which obtained by him under the Right to Information Act were not available and, therefore, the solitary eye witness is not cross-examined on this aspect. It is also well settled that mere relationship is not sufficient to show the person is interested person but then opportunity is to be granted to the accused to cross-examine the witness and, therefore, the writ petition deserves to be allowed. Accordingly, I proceed to pass following order :

### **ORDER**

- (i) The Criminal Writ Petition is allowed.

(ii) The order passed by the Additional Sessions Judge, Nagpur, below Exhibit 201 in Sessions Trial No.77/2021, dated 26.4.2024 is hereby set aside.

(iii) The application under Section 201 for recalling of the witnesses is hereby allowed and permission is granted to the accused to cross-examine PW 1 and PW 18.

(iv) The witnesses are to be recalled and every endeavour to be made by the defence counsel to cross examine the witnesses without seeking any adjournment.

(v) Both the parties shall co-operate with the Court to record the evidence of these two witnesses after they are recalled before the Court.

(vi) Criminal Writ Petition is disposed of.

**(URMILA JOSHI-PHALKE, J.)**