



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 184 OF 2024

1. Sachin Vinayak Karad and Others.
Age : 21 Years, Occu : Education,
2. Nitin s/o Vinayak Karad,
Age : 20 Years, Occu : Education
3. Pravin s/o Vinayak Karad,
Age : 17 Years, Occu : Education,
under the guardian of Applicant No.1
All R/o. Rameshwar, Latur,
Tq. & Dist. Latur.

...APPLICANTS

Versus

The State of Maharashtra
Through the Police Station Officer.
Gategaon Police Station,
Latur, Tq. & Dist. Latur

...RESPONDENT

Mr. Rahul Pandhari Cheble, Advocate for the Applicants.
Mr. S. N. Morampalle, APP for Respondent – State.

CORAM: ABHAY J. MANTRI, J.
DATE : APRIL 30, 2026

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally, with the consent of the learned Advocates for the parties, at the admission stage.
2. The Applicants, i.e. children in conflict with law, being aggrieved by the order dated 10th May 2024, passed by the learned Principal

Magistrate, Juvenile Justice Board, Latur (for short, '*the Magistrate*'), below Exhibit-59 in J.C. No. 100 of 2020, have preferred the present Revision Application.

3. Heard the learned counsel appearing for the Applicants and the learned APP for the Respondent–State and perused the record and the impugned order.

4. At the outset, it appears that during the pendency of the trial, the prosecution has moved an Application under Section 311 of the Code of Criminal Procedure, 1973 (for short "*Cr. P. C.*"), contending that they be permitted to examine Rajesh Kashinath Karad, who is an eyewitness to the incident. After considering the material before the Board, the learned Magistrate allowed the said Application and permitted the prosecution to examine Rajesh Karad as a witness. Hence, the Applicants have preferred this Revision Application.

5. Learned counsel for the Applicants vehemently contended that the Investigating Officer was aware that witness Rajesh Karad is a material witness; despite the said fact, the Investigating Officer did not record his statement, as the witness is an influential person. Witness Rajesh Karad is being hand in glove with the Investigating Officer; his statement was not recorded. Therefore, at the fag end of the trial, it would not be appropriate to permit the prosecution to examine the witness whose statement was not

recorded by the Investigating Officer. Secondly, he submitted that if the prosecution is permitted to examine Rajesh Karad as a witness at a belated stage, then it would cause serious prejudice to the rights of the Applicants. Thirdly, he submitted that, to fill up the lacuna, it would not be appropriate to permit the prosecution to examine him as a witness; however, the learned Magistrate did not consider this fact and erred in allowing the Application. Therefore, he urged that the said order be set aside.

6. To buttress his submissions, he has relied upon the judgments of the Hon'ble Supreme Court in *U. T. of Dadra and Nagar Haveli and Another Vs. Fatehsinh Mohansinh Chauhan*¹, *Rajaram Prasad Yadav Vs. State of Bihar and Another* [passed in Criminal Appeal No.830 of 2013 (@ S.L.P. (Cri.) No.2400 of 2011)] and the judgment of this Court in *Sanjay Vasant Kadam Vs. The State of Maharashtra* (in Criminal Writ Petition No. 3327 of 2015).

7. The learned APP submitted that Rajesh Karad is an eyewitness to the incident; therefore, his evidence is essential for a just decision of the case and to bring material evidence on record. Therefore, he submitted that the order passed by the learned Magistrate is just and proper, and no interference is required in the exercise of revisional jurisdiction.

8. Having considered the rival contentions of the parties and having gone through the record, the short question that arises for
¹ (2006) 7 SCC 529

consideration is “whether the order passed by the learned Magistrate permitting the prosecution to examine Rajesh Karad as a witness is just and proper?”

9. The Hon’ble Supreme Court in ***Rajaram Prasad Yadav*** (supra) has categorically dealt with the power of the court invested under Section 311 of the Cr. P. C. and observed as under:

“While dealing with an application under Section 311 Cr. P. C., read along with Section 138 of the Evidence Act, the following principles 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? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?*
- b) *The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on an inchoate, inconclusive, 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 summon and examine or recall and re-examine any such person.*
- d) *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.*
- 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 examination in order to arrive at a just decision of the case.*
- h) *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.*
- 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 safeguard while exercising 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.*
- 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.*
- 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. In view of the law laid down by the Hon’ble Supreme Court in ***Rajaram Prasad Yadav*** (supra), it would be appropriate to appreciate the facts of the case while determining the issue at hand.

11. On perusal of the FIR, at the outset, *prima facie*, it appears that at the time of the incident, Rajesh Karad was present on the spot, and he tried to intervene in the quarrel between the Applicants and the injured Informant and tried to rescue him. The averments in the FIR itself *prima facie* indicate that Rajesh Karad was an eyewitness to the incident and present on the spot. Apart from that, the learned Magistrate, in paragraph No. 5 of the order, has categorically observed that “*After perusal of the evidence of six witnesses, it is revealed that Rajesh Karad was very much present at the time of the incident*”; therefore, the learned Magistrate allowed the Application. The FIR as well as the evidence of six witnesses clearly indicate that at the time of the incident, witness Rajesh Karad was present and intervened in the said quarrel to rescue him; therefore, in my view, he is a material/star witness to the incident and, therefore, the order passed by the learned Magistrate holding that the evidence of the said witness is essential for a just decision of the case and to bring crucial evidence on record and/or to remove any ambiguity

regarding the facts in dispute, it is necessary to examine the witness, is just and proper, and no interference is required.

12. Perused the judgment of this Court in *Sanjay Vasant Kadam* (supra). The facts in the said case were that none of the witnesses whose statements were recorded under Section 161 of the Cr. P. C. had referred to the presence of the witness at the place of the incident. Similarly, none of the witnesses who were examined before the Court had referred to the presence of the witness whom the prosecution seeks to examine. Thus, it seems that the facts in the said case and the case at hand are different, and therefore, what has been observed in *Sanjay Vasant Kadam* (supra) is hardly of any assistance to the Applicants in support of their submissions.

13. Learned Advocate for the Applicants drew my attention to paragraph Nos. 18 and 29 in the judgment of *Rajaram Prasad Yadav* (supra), and paragraph No.13 in the judgment in *U.T. of Dadra and Nagar Haveli and Another* (supra), and submitted that it would not be proper to permit the prosecution to fill up the lacuna of its case. Considering the facts of the case, it appears that the law laid down in *U.T. of Dadra and Nagar Haveli and Another* (supra) and *Rajaram Prasad Yadav* (supra) is hardly of any assistance to the Applicants in support of their contentions; on the contrary, it would help the prosecution, as in *Rajaram Prasad Yadav* (supra), the Hon'ble Supreme Court has categorically observed that the exercise of power under Section 311 of

the Cr. P. C. should be resorted to only with the object of finding out the truth and obtaining proper proof of such facts, which will lead to a just and correct decision of the case, and the learned Magistrate has done the same. Therefore, the judgments on which the learned Advocate for the Applicants has placed reliance are hardly of any assistance to him.

14. Apart from that, learned Advocate for the Applicants tendered a copy of the status report of RCC No.644 of 2004 and submitted that the case was pending against Rajesh Karad before the learned Chief Judicial Magistrate, Latur, wherein he was shown as absconding, as such, the non-bailable warrant was issued against him, which was returned un-served since 2004; he did not appear before the concerned Court and therefore he was shown as absconding. His submission also suggests that, at the time of the investigation, he might not have been available to record his statement with the Investigating Officer; therefore, his statement was not recorded. However, the FIR itself indicates that at the time of the incident, Rajesh Karad was present on the spot and attempted to intervene to defuse the quarrel and rescue the informant. Having considered the above, I do not find merit in the contentions of the learned Advocate for the Applicants in that regard. On the contrary, it appears that the order passed by the learned Magistrate is just and proper and no interference is warranted in revisional jurisdiction.

15. As a result, *the Revision Application, being bereft of merits, stands dismissed*. Accordingly, the stay granted to the proceedings is vacated. The Rule is discharged. No order as to costs.

16. Inform the concerned Court accordingly.

17. Needless to clarify that the observations made in the above order are of a *prima facie* nature and should not cause prejudice to the rights of the Applicants during the trial.

(ABHAY J. MANTRI, J.)