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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 211 OF 2026

Dharmendra Satramdas Panjwani ... Petitioner

V/s.

The State of Maharashtra & Anr. ... Respondents

Ms. Rita Choudhry, Advocate for Petitioner.

Ms. Akshata Borode, Advocate for Respondent No. 2.

Mr. Sukanta Karmakar, APP for Respondent – State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 30th JANUARY, 2026.

P.C. :

1. Heard Ms. Rita Choudhry, learned Advocate for the Petitioner, Ms. Akshata Borode, learned Advocate for Respondent No. 2 and Mr. Sukanta Karmakar, learned APP for the Respondent No.1 – State.

2. Rule. Rule is made returnable forthwith and the matter is heard finally with the consent of parties.

3. By the present Petition filed under Article 226 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'), the Petitioner assails the Order dated 22nd November, 2022 passed by the Metropolitan Magistrate 14th Court, Girgaon, Mumbai ("Magistrate") in CC No. 806/SS/2020, by which "no cross order" was passed against the Petitioner; the Order dated 5th November, 2024 passed by the Magistrate dismissing the Application at Exhibit 42 in CC No. 806/SS/2020, filed by the Petitioner for setting aside "no cross order"; and the Judgment and Order dated 16th October, 2025 passed by the Sessions Court for Greater Mumbai at Mazgaon Mumbai ("Sessions Court") in Criminal Revision Application No. 67 of 2025, filed by the Petitioner against the Order dated 5th November, 2024, holding the said Revision to be not maintainable.

4. The material facts as would be relevant for the present proceedings are that Respondent No. 2 (Complainant) initiated proceedings before the Magistrate, under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI' Act) against the Petitioner (Accused), which were registered as CC No.

806/SS/2020. Examination-in-chief under Section 145 of the NI Act in the form of affidavit was filed by the Respondent No. 2 on 28th January, 2021.

5. On the day fixed for cross-examination of the Respondent No. 2, Petitioner sought an adjournment on the ground of unavailability of his Counsel. By order dated 22nd November, 2022 the Magistrate passed the following order :-

“The complainant is present. On last date adjournment was granted subject to cost of Rs.1,000/- vide Exh.26. Today the complainant is present. However, despite on last date adjournment was granted subject to cost today again adjournment application is filed instead of conducting cross-examination. Said adjournment application is rejected. The accused does not conduct cross-examination and delaying the proceeding. Hence, no cross order passed against the accused.”

6. Application at Exhibit – 42 in CC No. 806/SS/2020 filed by the Petitioner, seeking recall of the “no cross order” was dismissed by the Magistrate vide order dated 5th November, 2024. Aggrieved, Petitioner approached the Sessions Court by way of Criminal Revision Application No. 67 of 2025, which came to be dismissed on 16th October, 2025.

7. Dis-satisfied, Petitioner is before this Court.

8. Ms. Rita Choudhry, learned Advocate for the Petitioner submits that Petitioner has no intention to delay the proceedings. She submits that request for adjournment on 22nd November, 2022 was on account of the unavailability of the Advocate who was to conduct the cross-examination. She submits that the Advocate engaged by the Petitioner was in difficulties as such unable to remain present before the Court on the said day. She submits that the proceedings entail civil as well as penal consequence and therefore she prays for affording one opportunity to cross-examine the Respondent No. 2. She by relying on ground No. 7(h) in the Petition states that costs be imposed on the Petitioner.

9. Ms. Akshata Borode, learned Advocate for Respondent No. 2 submits that the Order dated 22nd November, 2022 itself records the conduct of the Petitioner of attempting to delay the matter. She submits that for an adjournment sought by the Petitioner on an earlier occasion, costs of Rs. 1000/- was imposed. She submits that Petitioner should have ensured the presence of his Advocate on the date fixed for cross examination. She submits

that prejudice and loss is caused to Respondent No.2 for no fault of the Respondent No.2. She submits that no case is made out for the interference in the impugned no cross order.

10. Perused the records with the assistance of the learned Advocates.

11. Facts of Petitioner having engaged an Advocate to represent him and the Petitioner contesting the proceedings bearing CC No. 806/SS/2020 before the Magistrate, are not in dispute. Ms. Rita Choudhry states that the Petitioner was present in Court on 22nd January, 2022. It is the absence of the Petitioner's Advocate on the said date (22nd January, 2022) fixed for cross examination of the Respondent No. 2, that resulted in passing of the "no cross order". The question thus is whether the Petitioner who had done his part of engaging an Advocate, should be made to suffer for the default of his Advocate. There is no material placed in this petition to indicate or suggest that the absence of the said Advocate was deliberate. Respondent No.2 does not allege any malafides qua the Advocate of the Petitioner, for his absence on 22nd November 2022.

12. Ms. Akshata Borode, learned Advocate for Respondent No. 2 is justified in contenting that prejudice is occasioned to the Respondent No.2, for reasons attributable to the Petitioner. However, if this petition is dismissed, prejudice that would be caused to the Petitioner would be far more than the prejudice occasioned to the Respondent no. 2. Respondent No. 2 can be compensated in terms of cost for the prejudice occasioned to the Respondent No. 2. Quite to the contrary, same may not be in case of the Petitioner.

13. Upon the order dated 22nd November, 2022, the Petitioner filed Application at Exhibit – 42, though captioned as Application for setting aside no cross order, in sum and substance, Petitioner had invoked the powers of the Court under section 311 of the Cr.PC. The Magistrate rejected said Application at Exhibit – 42 holding that no power of recall was available to the Magistrate in terms of section 311 of Cr. P. C. Revision Application No. 67 of 2025 filed against the said order, under section 397 of Cr.PC. was rejected by the Sessions Court on 16th October, 2025, holding said

Revision as not maintainable.

14. Chapter X of the Indian Evidence Act, 1872 deals with “*OF THE EXAMINATION OF WITNESSES*”. Section 137 and 138 of the Indian Evidence Act, 1872 reads as follows:-

“137. Examination-in-chief. — *The examination of witness by the party who calls him shall be called his examination-in-chief.*

Cross-examination. — *The examination of a witness by the adverse party shall be called his cross-examination.*

Re-examination. — *The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.*

138. Order of examinations. — *Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination. — *The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”*

15. Section 311 of Cr. P. C. reads as follows:

“311. Power to summon material witness, or examine person present.—*Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already 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.”

16. The Hon’ble Supreme Court in the case of Varsha Garg Vs. The State of Madhya Pradesh & Ors.¹, while dealing with the power of the Court under Section 311 of Cr. P. C. in paragraph nos. 28, 29, 30, 31 and 32 has held as under:-

28. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine Section 311 of CrPC. Section 311 provides that the Court “may”:

(i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and

(ii) Recall and re-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 CrPC. 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.

29. The first part of the statutory provision which uses the expression “may” postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. 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 and re-examine any such person if his evidence appears to it to be essential to the just decision of the case”. Essentiality of the evidence of

¹ (2023) 19 SCC 646

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.

30 . A two judge Bench of this Court in Mohanla Shamji Soni (supra) while dealing with pari materia provisions of Section 540 of the Criminal Code of Procedure 1898 observed:

16. The second part of Section 540 as pointed out albeit imposes upon the court an obligation of summoning or recalling and re-examining any witness and the only condition prescribed is that the evidence sought to be obtained must be essential to the just decision of the case. When any party to the proceedings points out the desirability of some evidence being taken, then the court has to exercise its power under this provision — either discretionary or mandatory — depending on the facts and circumstances of each case, having in view that the most paramount principle underlying this provision is to discover or to obtain proper proof of relevant facts in order to meet the requirements of justice.

Justice S Ratnavel Pandian, speaking for the two judge Bench, noted that the power 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. It is only circumscribed by the principle that the —evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. In that context the Court observed:

“18 ...Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or

capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties.”

31. *Summing up the position as it obtained from various decisions of this Court, namely Rameshwar Dayal v. State of U.P., State of W.B. v. Tulsidas Mandhra²⁰, Jamatraj Kewalji Govani v. State of Maharashtra Masalti v. State of U. P. Rajeswar Prosad Misra v. State of W.B. and R. B. Mithani v. State of Maharashtra, the Court held:*

“27. The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.”

32. *The power of the court is not constrained by the closure of evidence. Therefore, 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. The statutory provision goes to emphasis that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth*

as an aid in the realization of justice is manifest.

17. The Hon'ble Supreme Court in the case of Rajaram Prasad Vs. State of Bihar and Anr.² in paragraph nos. 17 to 17.14 has held as follows:-

17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC 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 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.

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 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.

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

² (2013) 14 SCC 461.

of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

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 safeguard, 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.

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 CrPC 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.

18. Thus, the principle derived from the decision of the Hon'ble Supreme Court, the Court is invested with powers to recall and re-examine any person subject to satisfaction of the same being essential for the just decision of the case. Obviously, exercise of such power should be made judiciously and with extreme care and caution.

19. Cross-examination is a technical skill and an instrument in the hands of the adversary for bringing out and testing the truth of the evidence of witness. Right of cross-examination is a valuable right and an integral part of principles of natural justice. Order dated 22nd November, 2022, does not make out any exceptional circumstance to take away Petitioner's right of cross-examination. Petitioner was required to be afforded an opportunity to cross-examine the Respondent No. 2 so as to enable the Petitioner to put his defence in a proper way. Indulgence to the Petitioner was therefore due.

20. In the facts and circumstances of this case, I am of the opinion that denial of the right of the Petitioner to cross-examine

Respondent No.2, will result in grave prejudice to the Petitioner. Ends of justice would be secured if the Petitioner is permitted to cross-examine Respondent No. 2, subject to the Petitioner paying cost of Rs. 15,000/- to the Respondent No. 2.

21. Ms. Rita Choudhry, states that said cost would be paid to Respondent No. 2 within a period of two weeks from today and proof of such payment would be placed before the Magistrate. She states that the matter before the Magistrate is now scheduled on 16th February, 2026. She states that the Advocate for the Petitioner would be ready to cross-examine Respondent No. 2 on the said date or on any other date that the Magistrate may fix as per its convenience. Ms. Rita Choudhry, states that no adjournments would be sought for cross-examination of Respondent No. 2 or any other witnesses that may be examined by Respondent No.2.

22. Ms. Akshata Borode, states that Respondent No. 2 would be present on 16th February, 2026 and would be ready to depose in the matter. Statements made by Ms. Rita Choudhry and Ms. Akshata Borode are taken on record.

23. This Petition is allowed in terms of prayer clause (a), subject to Petitioner paying cost of Rs. 15,000/- to the Respondent No. 2, as a condition precedent, within 2 weeks from today. Impugned “no cross” Order dated 22nd November, 2022 passed below Exhibit-7 and the Order dated 5th November, 2024 passed by the Magistrate on Application at Exhibit – 42 on the file of CC No. 806/SS/2020 are set aside. Petitioner is afforded opportunity to cross-examine Respondent No.2 on the above terms.

24. Rule made absolute in the above said terms Writ Petition No. 211 of 2026 is disposed of.

(ASHWIN D. BHOBE, J.)