

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.243 OF 2026**

Dilip Karia ... Petitioner
versus
The State of Maharashtra and Anr. ... Respondents

Mr. Mukesh J. Pabari, for Petitioner.
Mr. A.D.Kamkhedkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 30 JANUARY 2026

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 4 December 2025, whereby the learned Magistrate has rejected the application to recall the complainant for cross-examination. The principal reason assigned in the application to recall the complainant for cross-examination is that the Advocate who was representing the Petitioner did not effectively cross-examine the complainant. Subsequently, the Petitioner has discharged the said Advocate and a new Advocate has been appointed. Therefore, to rule out the possibility of prejudice and advance the cause of justice, the complainant be recalled for cross-examination.
3. By the impugned order, the learned Magistrate rejected the application observing, inter alia, that the Advocate, who then represented the

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complainant, exhaustively cross-examined the complainant, in the year 2023, and, after a span of more than one and half years, the Petitioner preferred an application to recall the complainant. The change in the Advocate cannot be a ground to recall the complainant for cross-examination.

4. Learned Counsel for the Petitioner submitted that the learned Magistrate has taken a constricted view of the matter. Several questions were not asked by the former Advocate of the Petitioner, which are necessary for a just decision of the case. Learned Magistrate has applied an incorrect test to decide the application for recalling the complainant.

5. I am unable to accede to the submissions of the learned Counsel for the Petitioner. The Petitioner has cross-examined the complainant. The contention that, few questions were not asked by the Advocate, who then represented the accused, and on account of the change in the Advocate, the accused be permitted to recall a witness cannot be a sustainable ground to exercise the power under Section 311 of the Code of Criminal Procedure, 1973.

6. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **State (NCT of Delhi) Vs. Shiv Kumar Yadav and Another**¹, wherein the Supreme Court considered the question, whether recall of witnesses could be allowed on the plea that, the defence Counsel

¹ (2016) 2 SCC 402

was not competent and had not effectively cross-examined the witnesses.

7. In the context of the facts of the said case, while answering the question in the negative, the Supreme Court enunciated that, mere change of Counsel cannot be a ground to recall the witnesses. The observations of the Supreme Court in Para No. 11 and 15 are material:-

“11. It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The accused is entitled to be represented by a counsel of his choice, to be provided all relevant documents, to cross-examine the prosecution witnesses and to lead evidence in his defence. The object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The power available with the court to prevent injustice has to be exercised only if the court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. The legislature in its wisdom has left the power underfined. Thus, the scope of the power has to be considered from case to case. The guidance for the purpose is available in several decisions relied upon by the parties. It will be sufficient to refer to only some of the decisions for the principles laid down which are relevant for this case.

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15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a

counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination."

8. Moreover, the complainant is yet to examine other witnesses and the Petitioner-accused will have an opportunity to cross-examine those witnesses, and also lead evidence in rebuttal. Thus, no irretrievable prejudice would be caused to the accused by declining to recall the complainant for cross-examination.

9. Thus, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)