



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

CRIMINAL WRIT PETITION NO. 68 OF 2026

Shubham s/o Anandrao Bawne

-- VERSUS --

The State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. B.M. Kharkate, Advocate for the Petitioner.

Ms. T.H. Udeshi, A.P.P. for the Respondent/State.

CORAM : M.M. NERLIKAR, J.

DATE : JANUARY 28, 2026.

Heard.

2. The order under challenge is dated 18/09/2025 passed below Exh.-32 by the learned Chief Judicial Magistrate, Bhandara. It appears that the petitioner had filed an application on 10/03/2025 for grant of permission to call the prosecution witnesses Nos.1, 2 and 3 for cross-examination on the ground that when the matter was kept for cross-examination of the aforesaid witnesses, he was absent, and therefore, the statement of witnesses came to be recorded by the prosecution. The say of the prosecution was called. Prosecution has opposed the said application on the ground that, opportunity was granted to the accused to cross-examine the witnesses, and accordingly, PW-2 and

P.W.-3 were cross-examined by accused himself in length. It is further submitted that though the cross-examination was deferred at the request of the advocate for accused and kept on 21/08/2023, however, the Advocate who was representing the accused had not appeared and remained absent, and therefore, Court was constrained to pass the order at Exh.-19 and Exh.-20 on the said date. On these rival submissions, the Court below has passed the order at Exh.-32 thereby rejecting the application on the ground that the Court have given opportunity to the accused for cross-examination of two witnesses and they were cross-examined by accused at length.

3. The Trial Court has observed as under:-

“4. After perusal of record, it appears that my predecessor has recorded examination-in-chief of PW.1 on 21.08.2023. On that day, on the request of accused cross-examination was deferred till next date. Again, on 30.08.2023, accused moved application vide Exh.20 for adjournment which was rejected by the Court by passing order on the same day. Thereafter, on 16.12.2024, PW 2 & 3 examined by prosecution. On that day accused's counsel remained absent. Therefore, accused himself cross-examined those witnesses. From this, it is clear that PW 2 & 3 have cross-examined by defence side. Despite of granting opportunity of cross-examination of PW1, counsel for accused failed to avail said opportunity. My predecessor has

passed detail order below Exh.19 & 20 on 30.08.2023. The said order is not challenged by the accused. Now, same court can not review the said order. It does not appear that the opportunity of cross-examination of prosecution witnesses has been denied by the court. So in such circumstances, no substance found in the submission of accused and no sufficient ground to recall the witnesses. Hence, application stands rejected.”

4. The learned counsel appearing for the petitioner submits that one more opportunity may be granted so that the accused should not suffer for the negligence on the part of the counsel. It was further submitted that under Section 311 of Cr.P.C., the witness can be cross-examined at any stage of the trial and in the present case no prejudice would be caused if the witnesses are cross-examined. He lastly relied on the judgment of the Supreme Court reported in 1991 Cr.L.J. 1521, ***Mohanlal Shamji Soni VS Union of India and Another***, and accordingly, submits that for just decision of the case a witness can be called at any stage.

5. On the other hand, the learned A.P.P. vehemently opposes the application and submits that it is not in dispute that accused should not suffer for the negligence on the part of counsel, however, he submits that, in spite of opportunity granted to cross-examine the witnesses, the learned counsel could not

cross-examine, and therefore, the order came to be passed below Exh.-19 and Exh.-20. Even those orders are also not challenged by the petitioner, under such circumstances, the application filed by the petitioner at Exh.-32 is not maintainable unless and until the order passed below Exh.-20 is set aside. Therefore, he submits that though the application seems to have been made to set aside the order passed below Exh.-20 which was rejected and was never challenged and fresh application was made in the year 2025 for recall of the witnesses P.W.-1, P.W.-2 and P.W.-3 for cross examination, and therefore, he submits that there is no merit in the petition and same deserves to be rejected with costs.

6. I have heard the learned counsel for the petitioner and the learned A.P.P. I have also perused the order passed below Exh.-19 and Exh.-20, wherein the application for adjournment was rejected. Upon perusal of the impugned order, admittedly, so far as P.W.-1 is concerned, he was examined on 21/08/2023, P.W.-2 and P.W.-3 were examined and cross-examined on 16/12/2024. Therefore, so far as cross-examination of P.W.-2 and P.W.-3 is concerned, it does not arise as he was cross-examined by the accused himself. So far as P.W.-1 is concerned, it is to be mentioned that he was examined on 21/08/2023 and the application for cross-examination was filed

almost after 2 years, i.e., on 10/03/2025. Not only that even P.W.-2 and P.W.-3 both were examined and cross-examined on 16/12/2024 and then also the petitioner prayed to cross-examine even P.W.-2 and P.W.-3, i.e., almost after 4 months.

7. It is a matter of record that the counsel appearing for the accused is negligent. Not only that the Court has observed in the order dated 30/08/2023, wherein in the order passed below Exh.19 and Exh.20 as under:-

“It seems that, the accused as well as the learned counsel for the defence is not serious and conscious about the proceedings and is taking the trial so casually.”

8. Therefore, the Court has specifically observed that counsel who is appearing for accused is not serious enough to conduct the trial. Further, it is to be noted that when the examination-in-chief of P.W.-1 was recorded on 21/08/2023, no attempts were made immediately to file the application to permit the petitioner to cross-examine P.W.-1. It is only on 10/03/2025, the application was preferred. Further, it is to be noted that the order was passed below Exh.19 and Exh.-20, rejecting the application of the petitioner on 30/08/2023. Even that order was also not challenged.

9. It is necessary to mention at this juncture that the counsel who is appearing before the trial Court on behalf of the accused – petitioner seems to be negligent. It appears that at the fag end of the trial, when 313 statement was also recorded, the present petition was filed. It is further to be noted that the present petition was filed on 21/01/2026, while the impugned order was passed on 18/09/2025. All these factors goes to show that the counsel who is appearing for accused is not vigilant and further it appears that he is negligent. Considering the above facts and circumstances, I do not find any error in the impugned order. The Criminal Writ Petition is therefore **dismissed**.

[M.M. NERLIKAR, J]