

MHAH030060012022



REG. CRI. CASE NO. 1161/2022

**The State of Maharashtra
Vs.
Dattatray Balasaheb Datrang**

ORDER BELOW EXH.29

The prosecution has moved present application for recording the evidence of witness under Section 311 of the Code of Criminal Procedure.

2. It is the contention of the prosecution that the witness Priyanka Datrang has seen the incident as she was present at the time of incident. However, her statement is not recorded, but her evidence is necessary to decide the matter. Hence, the prosecution has prayed to issue summons to the said witness on her given address.

3. The accused opposed application on the ground that investigation officer has not recorded the statement of said witness. Hence, in the absence of previous statement of witness there is no provision to examine said witness before the Court. Hence, the application is liable to be rejected and prayed to reject the same.

4. Heard the learned APP. She argued that the witness namely Priyanka Datrang is the main witness of this case. Moreover, she is also injured as her medical certificate (Exh.34) is available on record. Though the investigation officer has failed to record her statement, mere on this ground she cannot be denied to appear before the Court as a witness. It is submitted that Section 311 of the Code of Criminal Procedure is specific in this regard. Hence, prayed to allow the application.

5. On the other hand, the learned counsel for the accused vehemently argued that the investigation officer did not seem it necessary to record the statement of said witness. Therefore, her statement is not recorded. If the witness is called to depose before the Court it will affect the right of the accused as her previous statement is not available on record. It is further submitted that the prosecution witness has given some admissions in the cross examination, therefore, it is not necessary to call the said witness. Moreover, the right of accused will be affected as the statement of accused is not recorded. It is further submitted that if the statement of witness is recorded then she can be examined before the Court. In this regard, he has relied on the authority of **Kishore Singnapurkar and Ors. Vs. The State of Maharashtra and Ors. 2012 ALL MR(Cri.) 2886**. Hence, he submitted that the application be rejected, if allowed as per the authority her statement be recorded.

6. On the other hand, learned APP has submitted that the matter is at the stage of evidence. The role of the said witness is main in this case, as she is eye witness of the incident as well as her medical certificate is on record. Therefore, it is clear that she is injured also. As per the learned APP in order to decide the case on merit the evidence of said witness is very much necessary. Hence, prayed to allow the application.

7. To support her contention she relied on the authority of **Sanjay Vasant Kadam Vs. State of Maharashtra 2015(3) AIR Bom R(CRI)908** and submitted that in view of ratio of the said authority the witness can be recorded any time before pronouncement of the judgment. The said witness is main witness of this case therefore, her evidence will be helpful to decide the matter on merit. Hence, prayed to allow the application.

8. Considering submissions of both the parties it is necessary to see Section 311 of the Code of Criminal Procedure. As per said Section the Court may at any stage of the trial can summons any person as a witness. If his evidence appears to it to be essential to just decision of the case. Hence, it is necessary to see whether the evidence of said witness is necessary for the just decision of the case or not? In this regard the evidence of informant shows that at the time of the incident the proposed witness was with him. Moreover, her medical certificate(Exh.34) is also on record. In First Information Report also the reference of proposed witness has come that the incident occurred in her presence. Since the incident occurred in the presence of said witness her evidence is important to decide the matter on merit. So far as the prejudice to accused is concerned, the accused has every right to cross examine the witness. Therefore, no prejudice will be caused to the accused.

9. So far as the giving direction to the investigation officer to record the statement under Section 161 of the Code of Criminal Procedure is concerned in the case of **Kishore Singnapurkar and Ors. Vs. State of Maharashtra and Ors.** (cited supra) the Hon'ble Bombay High Court has granted liability to the investigation officer to record the statement of the witness. However, in the authority of **Sanjay Kadam Vs. State of Maharashtra** (cited supra) the Hon'ble Bombay High Court has discussed on the judgment filed by the accused in detail. In paragraph No. 19 it is observed that the facts of the case of **Kishore Singnapurkar** (cited supra) were peculiar. Therefore, the directions were given to record statement of witness under Section 161 of the Code of Criminal Procedure were with the consent of the parties. Therefore, it does not laid down any principle of law.

10. As such from the reading of the citation it is clear that while granting permission to call a person as a witness under Section 311 of the Code of Criminal Procedure there is no need to direct the investigation officer to record statement of witness under Section 161 of the Code of Criminal Procedure. Therefore, in my humble opinion the authority filed by the accused will not be applicable here. In view of the above discussion, it is necessary to record the evidence of said witness. In the result, I pass the following order -

ORDER

- 1] The application is allowed.
- 2] Issue witness summons to Priyanka Sandip Datrange.

Ahmednagar
Date :01.01.2026.

(L. S. Padhen)
Chief Judicial Magistrate,
Ahmednagar.