



Sessions Case No. 225/2024
State Vs. Sk. Wahid
CNR MHAM010044422024

Order below Exh. 24

1. This is an application for recalling the witness i.e. complainant (PW1). It is contended that on 10.03.2024, the complainant was examined before the Court, and though cross-examination was conducted, certain omissions relating to the material facts of the case could not be brought on record. According to the accused, such omissions are significant and necessary for proper adjudication of the matter. Hence, the present application is preferred seeking recall of the witness for further cross-examination.
2. Learned APP opposed the application.
3. In the criminal administration of justice, while safeguarding the rights of the accused, it is equally necessary that the Court ensures that the principle of *audi alteram partem* does not become a tool to cause inconvenience, harassment, or undue hardship to the witnesses and victims. The Court is required to strike a delicate balance between the right of the accused to effectively defend himself and the right of the witness to be protected from repetitive and avoidable appearances before the Court.
4. In the present case, it is not in dispute that the complainant was already cross-examined by the accused. The ground now urged for recall is that certain omissions could not be brought on record, which, according to the accused, are material. It appears from the record that the accused has subsequently changed his advocate and, on that premise, seeks to reopen the cross-examination.

5. It is well settled that recall of a witness under Section 311 of the Code of Criminal Procedure is a discretionary power to be exercised judiciously and not as a matter of course. The said provision is intended to enable the Court to arrive at the truth and render a just decision; however, it cannot be invoked to fill up lacunae arising out of negligence, inadvertence, or tactical decisions of a party or its counsel.

6. At the same time, it is equally settled that if the proposed recall is essential for a just decision of the case, the Court should ordinarily be liberal in allowing such application, albeit with appropriate safeguards to prevent abuse of process.

7. In this context, reference may be made to *Rajaram Prasad Yadav v. State of Bihar*, (2013) 14 SCC 461, wherein the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C. must be exercised to meet the ends of justice, but with caution to ensure that it is not used to cause prejudice to the opposite party or to protract the trial.

Similarly, in *Vinod Kumar v. State of Punjab*, (2015) 3 SCC 220, the Hon'ble Supreme Court has deprecated the practice of recalling witnesses and granting adjournments in a routine manner, particularly when such applications are made after the witness has already been cross-examined.

8. In the present case, the reason assigned by the accused is essentially attributable to change of advocate and alleged omission during earlier cross-examination. Such ground, by itself, cannot be a justification to recall a witness unless the Court is satisfied that such recall is necessary for just decision of the case.

9. At the same time, denying an opportunity altogether may, in a given case, cause prejudice to the defence if the omissions sought to be elicited are indeed material. Therefore, while balancing the competing interests, this Court is of the view that a limited opportunity can be granted to the accused to further cross-examine the complainant.

10. However, it cannot be overlooked that the witness has already undergone the ordeal of deposition and cross-examination, and recalling him would necessarily cause inconvenience and disruption. The Court must ensure that such liberty is not misused and that the witness is not subjected to unnecessary harassment.

11. In these circumstances, this Court is inclined to allow the application subject to imposition of costs, so as to balance the equities between the parties and to deter casual or negligent conduct leading to recall of witnesses.

12. Accordingly, the accused shall be permitted to recall the complainant (PW1) for limited cross-examination strictly confined to the omissions stated in the application. The accused shall deposit costs, which shall be paid to the complainant towards compensation for inconvenience caused.

13. It is made clear that no further adjournment shall be granted on the said date, and failure to cross-examine the witness on that occasion shall result in closure of the right. Hence, I pass the following order.

ORDER

1. Application is allowed subject to costs of ₹2000/-. (Two thousand only).
2. Issue witness summons to PW 1 subject to payment of costs of ₹ 2,000/- by the accused.

Dated :24.04.2026

(Yashwant A. Goswami)
District Judge-3 & A.S.J.
Amravati.