

MHAU040016862024



ORDER BELOW EXH.69 IN SESSIONS CASE NO.103/2024

The State Vs. Arun

1] Accused Nos.1 to 10 have moved this application for setting aside no cross order dated 20.08.2025.

2] It is contended that, on last date learned counsel of present accused was arguing a part heard Criminal Appeal No. 11 of 2020 before the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad. It was not concluded and was kept after lunch before the Hon'ble High Court. Therefore, the learned counsel of accused asked his associate to cross examine the witness but, before reaching his associate, the Court has passed "No cross" order against the accused. The associate has reached Vaijapur at 3.45 p.m and showed his readiness to cross examine the witness. As the witness was already bond over and no cross order was passed. Hence, this application.

3] Learned APP filed say. He submitted that, the grounds mentioned in the application are not bonafide. As per the directions of Hon'ble Supreme Court, prosecution has examined PW1 on 17.07.2025 but, the learned advocate for accused had filed adjournment applications. This Court has directed the accused to pay bhatta to the witness twice. On 20.08.2025 also PW1 Balu and another witness Anil Sonawane were present in the Court since 11.00 a.m. but, associate of learned counsel made submission that, Shri

Ghanekar advocate will come at 1.00 p.m. but, did not appear. At 1.00 p.m. junior advocate of accused submitted that, Shri Ghanekar advocate will come at 3.00 p.m. and cross examine the witness. He also filed a purshis Exh.68 to that effect. But, till 3.45 p.m. accused were present but, their counsel absent hence, the Court has rightly passed no cross order against the accused. Hence, he prayed to reject the application with costs.

4] Heard learned APP and learned counsel of accused. The record demonstrates that, the witness was present on 10.07.2025 but, due non-production of accused before the Court, witness was bond over. On 17.07.2025 chief examination of PW1 Balu Sonawane is recorded. Thereafter, the adjournment application Exh.56 was filed which was rejected. Thereafter accused filed application Exh.57 for grant of time to engage the advocate but, it was also rejected on the same day.

5] On 20.08.2025 two witnesses were present. The case was fixed for cross-examination of PW1 but, neither the counsel of accused conducted cross-examination nor he filed adjournment application till 4.30 p.m. since 11.00 a.m. the Court was waiting for the learned counsel . The matter was kept as per the request of associate of learned counsel at 12.00 noon but, it was informed vide purshis Exh.68 that, the learned counsel will appear in the second session. However, when the Court working resume after lunch at 2.45 p.m. and the learned counsel was repeatedly called, none appeared on behalf of learned counsel of accused.

6] Here it is important to mention that, since the matter is made time bound by Hon'ble Supreme Court and direction is given to complete the evidence of eye witnesses within six months, this Court is taking all efforts by keeping the matter to complete the directions within stipulated period. This Court has kept the matter as per the convenience of counsel of accused on every date, with the specific direction that they will conduct the matter positively without fail, in order to comply the directions. Since the date was taken as per the convenience of the learned counsel, no other matters were kept on board, so that the directions will be completed within the stipulated time but, due to absence of learned counsel of accused on the fixed date, the whole board of this Court was disturbed and no other work could be taken.

7] It is also important to mention that, this particular date was also taken by the learned counsel as per his convenience with commitment to the court that he will conduct the mater but, the court was kept waiting till 3.45 p.m. the witnesses had come all the way from remote place and they had last bus at 3.30 p.m. Till 3.45 p.m. none appeared on behalf of the accused to conduct the cross-examination of PW1. Therefore, no cross order is came to be passed against the accused.

8] It is admitted position of record that, on earlier date also the learned counsel had sought adjournment which was rejected and no cross order came to be passed. But, in order to give fair opportunity to the accused of fair trial, the order was set aside with direction to complete the cross-examination on next date. Accordingly, matter was kept on 12.08.2025 but, learned counsel

sought adjournment on his personal medical ground which was granted.

9] However, again the learned counsel of accused prolong the matter and protracted the trial by remaining absent for cross-examination of PW1. The Court had already granted fair opportunity to the accused by setting aside no cross order but, accused has failed to comply the said direction. On last date i.e. 20.08.2025 the learned counsel of accused has sought adjournment on the ground of his sickness and therefore, considering his medical issue the adjournment was granted with direction to pay bhata of the witnesses but, the accused have not paid bhata of the witnesses which was directed to be paid on 20.08.2025. This shows that, the accused are deliberately protracting the trial the reason best known to them.

9] Despite above these facts since the accused have shown readiness to cross examine the witness, one last chance is again granted to accused to conduct the trial, since the directions of Hon'ble Supreme Court yet not expired in order to comply the directions of Hon'ble Supreme Court, within stipulated period. Thus, one last chance is granted to the accused to conduct the trial positively on fixed dates.

10] The ground mentioned by the accused for setting aside the said order is required to be allowed by giving them one chance of fair trial. Admittedly, learned counsel of accused has not appear before the Court within time, which has certainly caused delay in trial of the accused and the witness was required to sent back for absence of the counsel. Hence, for the same present accused are required to be

imposed bhatta to be given to the witness which has caused him to attend the Court due to fault of the accused. Thus, by taking into consideration the right of accused of fair trial as well as delay caused by the counsel of accused, the application deserves to be allowed on certain conditions. Hence, order :-

ORDER

- 1] Application Exh.69 is allowed subject to witness bhatta of Rs.10,000/- along with previous unpaid bhatta to be paid by accused Nos.1 to 10 collectively on next date.
- 2] Accused Nos.1 to 10 are hereby directed to conduct the cross-examination of the witness on next date without fail, failing which will result in no cross order.
- 3] Learned counsel is directed to expedite the matter.
- 4] Issue summons to PW1 Balu Harku Sonawane.

Date : 26.08.2025

(Smt.S.K. Upadhyay)
Additional Sessions Judge,
Vaijapur.