

MHAU040016862024



ORDER BELOW EXH.81 IN SESSIONS CASE NO.103/2024
The State Vs. Arun Sonwane and others
(Dated : 08.10.2025)

1] Accused Nos.1 to 9 have moved this application for setting aside no cross order as well as for granting the permission to cross-examine the witness PW3 Raosaheb Markas Sonawane.

2] It is contended that, learned counsel of present accused was out of station therefore he could not appeared before the court. Hence he had filed application which was rejected by the court. Further the accused who are under trial prisoners were not produced by the jail authority as well as they were also not produced on VC hence it is necessary to set aside the no cross order.

3] The learned APP and learned counsel assist to APP filed his reply and resisted the application. It is contended that the accused had approached the Hon'ble Supreme Court for bail and the Hon'ble Supreme Court has expedited the matter and directed to examine the witnesses as early as possible. Present matter was fixed as per the convenience of the learned counsel of accused but, still he remained absent to cross examine the witness and claimed adjournment. Even the accused had failed to

examine the earlier witnesses on fixed dates on which the matter was kept for cross-examination. It is submitted that the application is not maintainable as no justified grounds are made out for setting aside the no-cross order. With this, he prayed to reject the application with costs.

4] Heard the learned APP and learned counsel of the accused. The record demonstrates that, the accused have filed adjournment applications before this court while examining the other witnesses which were rejected and the accused had filed application for setting aside the no cross-order of the said witnesses. It transpired from record that though the dates are taken as per the convenience of the counsel but the adjournments are sought on every time and when the application for adjournments are rejected the accused are moving the application for setting aside the no cross-order.

5] The record is very much clear that every time the witnesses are present but for one or other pretext the adjournments are sought by the accused. The present application moved by accused for setting aside no cross-order is nothing but protraction of trial. The accused are aware that the present matter is made by time bound by the Hon'ble Supreme Court, inspite of it, repeatedly application for adjournment are filed on one or other ground which is causing delay in trial of the case and as well as achieving mandatory time line of Hon'ble Supreme Court.

6] Admittedly, the grounds mentioned by the accused for setting aside no cross order is not maintainable as per section 309(2) of Cr.P.C. It reads as under –

Section 309 – Power to postpone or adjourn proceedings -

“(1)

(2).....

a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in court but a party or his pleader is not present or the party or his pleader though present in court, is not ready to examine or cross-examine the witness, the court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be”.

7] It appears from record that no satisfactory ground is made out for adjournment as per the provision contemplated under section 309(2) of Cr.P.C. Every time the court constrained to pass no cross order although the dates are taken as per the choice of the counsel. It is causing delay in trial of the case as well as hampering the court work while keeping the matter on board. Since the matter is time bound by the Hon’ble Supreme Court therefore the court take at most precaution that the direction of the Hon’ble Supreme Court should be complied in any case, but due to adjournment applications filed on record by the accused, the court is unable to meet the directions of Hon’ble Supreme Court.

8] Considering the facts of the case as well as conduct of accused it appears that while setting aside the order below Exh.61 this court has already imposed heavy witness bhatta. In spite of it, the adjournments are being sought. This shows that the accused are deliberately protracting the trial the reasons best known to them.

9] Since there is direction of Hon'ble Supreme Court therefore in order to give one last chance to complete the cross-examination of PW3 and the court in order to give chance for fair trial to accused, is setting aside this order with following direction. Accordingly I proceed to pass the following order -

ORDER

- 1] Application Exh.81 is allowed subject to witness bhatta of Rs.10,000/- (Rs.Ten thousand) to be paid by accused Nos.1 to 9 collectively to witness PW3 Raosaheb Markas Sonawane and cost of Rs.20,000/- (Rs.Twenty thousand) to be paid to legal aid for the delay caused in conducting the trial.
- 2] Accused Nos.1 to 9 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 as accused Nos.1 to 9 are languished behind the bars since June, 2024.

Date : 08.10.2025

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