

.1.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, MALKAPUR,
DISTRICT – BULDHANA
Sessions Case No.31/2019
ORDER BELOW EXHIBIT – 24

MHBU110002572019 **State of Maharashtra** ... **Prosecution**



Versus

Shekhar Gajanan Dharamkar ... Accused

Opportunity is given to both the parties to make their submissions.

2. This application is filed on behalf of the accused under section 311 of the Code of Criminal Procedure, 1973. The accused states that he has been charged for the offences punishable under section 353, 332, 427, 504 of the Indian Penal Code, 1860 and section 181 read with section 3 of the Motor Vehicles Act. Three witnesses are examined by the prosecution. Cross-examination has already been taken on behalf of the accused through his earlier advocate.

3. The accused states that recently he has engaged another advocate. It is noticed that few questions which should have been asked during the cross-examination are not asked to the witnesses by earlier advocate. That was an inadvertent mistake. It is, therefore, requested that in the interest of justice and to find out truth, the witnesses be recalled for the purpose of their further cross-examination.

4. The ld. A.P.P. has strongly opposed this application. It is contended that sufficient opportunity is availed by the accused to

take cross-examination of the witness. According to him, the witnesses cannot be recalled for filling up lacuna. As such, it is prayed that the application be rejected. Ld. A.P.P. relied upon the decision of Hon'ble Delhi High Court in *Sushil Ansal V/s. State NCE Delhi*, (2021) 4 RCR (Criminal) 256 to support his submission.

5. Section 311 of the Code of Criminal Procedure, 1973 makes it possible to the court to recall or re-examine any person who has already been examined as a witness. However, the reason behind it must be that the evidence of such witness should be essential to the just decision of the case.

6. The Hon'ble Delhi High Court in the above cited case viz. *Sushil Ansal V/s. State NCE Delhi* (supra..) has specifically held in a similar situation that the change of advocate cannot be the ground to recall any witness who was already cross-examined. It provides no ground to exercise power under section 311 of the Code of Criminal Procedure for recalling the witness where due opportunity was afforded earlier. This being a settled possession, I find no merits in the present application. It will have to be rejected. Hence, the following order.

ORDER

The application is rejected.

Date : 24/06/2022

(S.V.Jadhav)
Additional Sessions Judge,
Malkapur.

CERTIFICATE

I affirm that the contents of this <u>PD.F.</u> file order is same, word to word, as per the original order.	
Name of the Stenographer	Balkrishna M. Shilwant.
Court	Ad-hoc District Judge-1 & Addl. Sessions Judge, Malkapur.
Date	24/06/2022
Order signed by the presiding officer on	24/06/2022
Order uploaded on	27/06/2022