



ORDER BELOW EXH. 186 IN C. C. NO. 3579/SS/2013
(CNR NO. MHMM15-000418-2013)

01. This is an application made by the accused for recall of DW1 Malina Chandrashekhar Choudhary under section 311 of the Code of Criminal Procedure (for short "*the Cr.PC*"). Heard both sides.

02. It is contention of the accused that, DW1 Malina Chandrashekhar Choudhary was examined on 11.03.2015 part cross was taken on 16.07.2016, 18.11.2017 and 17.02.2018. Then after the accused examined DW2 Mr. Jnanerwara Rao Vakalapudi on 30.11.2018, 31.12.2018, 01.08.2019, 23.11.2019, 19.09.2024, 11.11.2024 and 16.07.2025 and permission was granted to accused to examine DW3 Mr. Srinivas his evidence has yet not commence.

03. It is further contented that, the DW1 is the Managing Director of accused No. 1 company. The complainant after completion of evidence of DW1 produced various documents on 01.08.2019 at Exh. 98 and 23.11.2019 as per list Exh. 45 and on 21.12.2023 filed two documents i.e. original office copy of Bill of Entry dated 16.11.2011 and original typed Fax copy before submitting to customs. The documents were produced during the evidence of DW2. But the DW1 would be in a better position to explain certain documents being a Managing Director. Hence, in order to dislodge the presumption it is necessary to recall DW1.

04. The complainant objected the application by filing say

vide Exh. 189 and contended that, the application is filed only to prolong the trial. The accused has given full opportunity. The DW2 was also working as a Plant Manager and had full knowledge in respect of facts. The DW2 was thoroughly cross-examined. The documents were produced on behalf of complainant when the evidence on behalf of accused still underway. Therefore, it is falsely stated that the DW1 having better knowledge than DW2. Hence, prays that the application is filed only to protract the trial and it be rejected by imposing compensatory costs. In support of contention the complainant has relied upon the case of **State of Tripura V/s. Panna Ahmed 2026 SCC OnLine SC 960** in which it is observed that, *“section 311 of the Cr.P.C. confers wide discretionary power upon the Court. The said provision states that “any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”* Also in the present citation the reference of case of **State (NCT of Delhi) V/s. Shiv Kumar Yadav and Anr. (2016) 2 SCC 402** has been taken. Further emphasised that recall of witnesses cannot be permitted as a matter of course and that the Court must balance the requirement of a fair trial with other relevant considerations. It was observed that, *“certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was*

necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bonafide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bonafide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.”

05. At the same time in support of contention the accused has relied upon the case of **State (NCT of Delhi) V/s. Shiv Kumar Yadav and Anr. (2016) 2 Supreme Court Cases 402**, in which it is observed that *“the power under Section 311 Cr.PC. must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”*

06. Considering the above legal aspects and as per facts of the present case the evidence of DW1 Malina Chandrashekhar Choudhary was completed on 17.02.2018. Then after the

complainant recalled the witnesses. Accordingly, the statement of accused Nos. 1 and 2 under section 313 of the Cr.P.C. were recorded on 18.04.2024 in which the accused No. 2 Chandrashekhar Choudhary Malina was stated that he wants to examine himself as well as wants to examine witnesses. Since then the matter is for defence evidence. There is no order of closing of defence evidence after recording statement of accused under section 313 of the Cr.P.C. dated 18.04.2024. On the contrary the complainant filed application Exh. 187 for closing the evidence of accused. Considering it as already the matter is for defence evidence hence there is no question of recalling the DW1 Malina Chandrashekhar Choudhary. No doubt the evidence of DW1 was recorded but it was before recalling of complainant evidence. Then after the statement of accused under section 313 of the Cr.P.C. were recorded. Hence, the accused get opportunity to give evidence to the extent of further evidence of complainant as per question put in the statement of accused under section 313 of the Cr.P.C. In view, as since 2024 the matter is for defence evidence hence the accused is permitted to give evidence of Malina Chandrashekhar Choudhary as per contention made in this application on next date, failure to which necessary order will be passed on Exh. 187.

Mumbai
Date : 23.07.2026

Sd/-
(**M. R. Dhanorkar**)
Judicial Magistrate First Class,
7th Court, Dadar, Mumbai