

MHRG010027302016



Spl. (POCSO) Case No. 73/2016

State of Maharashtra Through
PSO Roha Police Station.

V/s.

Jagdish Pukhraj Jain and 2

:: Order Below Exh. 170 ::

Heard Ld. Spl. P. P. Prasad Patil, Adv. Pravin Mhatre for accused no. 1, Adv. Smt. Kureshi for accused no. 2 and 3.

02. This is an application u/sec. 311 of Cr. P. C. by Spl. P. P. for recalling PW 07 Rama Krushna Matere and PW 23 Priti Kantilal Jain. He has submitted that, PW 7 is a discovery panch to gold chain which is seized at the instance of accused no. 1. The Memorandum Panchnama is proved through PW 7 and is marked as Exh. 94. Ld. Spl. P. P. has also drawn my attention to the evidence of PW 23 Priti Kantilal Jain, who is the wife of the deceased Kantilal Khimji Jain. She has stated in her evidence she is in position to identify the gold chain. She has further stated that, the golden chains were identified by her before Executive Magistrate. Ld. Spl. P. P. further submits that, no prejudice will be caused to the accused as accused will have opportunity to cross-examine these witnesses and in any case admissions given by these witnesses will not be wiped out as the prosecution intends to show the gold chain to these witnesses

and nothing more. He further submits that, the application u/sec. 311 be allowed to meet the ends of justice.

03. Ld. Adv. Mhatre for accused no. 1 drawn my attention to the evidence of PW 7 and PW 23 and submits that, the prosecutions whole purpose to recall theses witnesses is to wipe out the admissions given by the witnesses. He placed reliance on the Judgment of the Hon'ble Apex Court in the case of **Iddar and others V/s. Aabida and another, reported in 2007 Legal Eagle (SC) 860** and prayed for rejection of the application. Ld. Adv. Smt. Kureshi adopted the arguments of Adv. Pravin Mhatre and also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Rajaram Prasad Yadav V/s. State of Bihar and another, in Cri. Appeal alongwith SLP(Cri.) No. 2400/2011** and prayed for rejection of application at Exh. 170.

04. Sec. 311 of Criminal Procedure Code, empowers the court to summon or recall witnesses if their evidence is essential for a just decision of the case. In the case of Iddar and others V/s. Aabida and another, cited supra, the prosecution wanted to record the statement of the complainant a fresh after the complainant deposed as per the settlement, at the variance with the statement recorded during investigation. The Trial Court in the said case observed that, it was a case where prosecution was trying to fill up lacunae of the prosecution version and it was rejected. The Hon'ble High Court set aside the said order without hearing the accused therein. It was carried in Appeal

before the Hon'ble Supreme Court. The Hon'ble Supreme Court emphasis that, Sec. 311 grants discretionary powers to the court to summon or recall witnesses if their evidence is crucial for justice and in view of the facts involved in the said case, Apex Court set aside the order of the Hon'ble High Court for its failure to provide reasons for its order and the lack of notice to accused.

05. In the case of Rajaram Prasad Yadav V/s. State of Bihar and another, the prosecution wanted to re-examine the witness as he turned hostile earlier. The Hon'ble Apex Court set aside the order of the Hon'ble High Court for want of bonafides in the application of the second Respondent therein while seeking the permission of the Court u/sec. 311 of Cr. P. C. for his re-examination by merely alleging that, on the earlier occasion he turned hostile under coercion and threat meted out to him at the instance of accused.

06. The facts involved in the cases cited supra are different from the facts involved in the present case. In the present case PW 7 as also PW 23 has deposed about the golden chain. The same was identified before the Executive Magistrate. However, it remained to be filed before the court at the time of filing of the charge-sheet, and therefore the Ld. Spl. P. P. was unable to show it to these witnesses to identify before the Court. The prosecution traced the golden chain and filed report on 18.06.2025 before this court. Ld. Spl. P. P. wants to show the said golden chain to these witnesses to get it identified. It is not

that the prosecution is introducing the golden chain for the first time before the court, at this stage. Admissions given by the witnesses, according to Defence Advocates, will not be wiped out. This application do not seem to be file with intention to fill up lacuna. Ends of justice will be served by allowing the prosecution to get the golden chain identified through the above said witnesses i.e. PW 7 and PW 23. It goes without saying that, defence advocate will have liberty to cross-examine these witnesses on the said point. No prejudice will be cause to accused if this application is allowed. Hence, I am inclined to allow the present application of the Prosecution and pass the following order.

:: ORDER ::

1. Application at Exh. 170 in Sessions Case No. 73/2016 is allowed.
2. Issue Witness Summons to PW 07 and PW 23 to remain present before this court, for identification of golden chain, on 03.11.2025.
3. Accused will be at liberty to cross-examine PW 07 and PW 23, if they wish so, on the aspect of identification of golden chain.

Sd/-

(R. D. Sawant)

Sessions Judge, Raigad-Alibag.

Place: Alibag

Date: 13.10.2025.

CERTIFICATE

I affirm that, the contents of this P.D.F file order are same, word to word, as per the original order.

Name of Stenographer : Smt. S. S. Puro (Grade- I)

Court : Principal District Judge,
Raigad-Alibag.

Date of Order/Judgment : 13.10.2025.

Order/judgment signed by
the Presiding Officer on : 13.10.2025.

Order/judgment uploaded on: 13.10.2025.