

Order Below Exh.49
(In Sessions Case No. 109/2020)

1. Application is filed by accused No.1 u/s. 311 of Criminal Procedure Code, 1973 (in short Cr.P.C.) for recalling PW No.1 for cross-examination.
2. Say of Ld. Addl. P. P. was called upon. Ld. Addl. P.P. has filed say on overleaf at Exh.49 and has mentioned that necessary orders may be passed.
3. Heard Ld. Advocate Mr. Mahesh Gunjal for accused No.1 and Ld. Addl. P.P. Ld. Adv. for accused has submitted that previous advocate has withdrawn his appearance and new vakalatnama is filed by him therefore in interest of justice application be allowed. Ld. Addl. P. P. submitted that opportunity was given to accused to cross-examine to PW No.1.
4. Perused record. Following points arise for my determination and findings are answered with reasons as follows.

Sr. No.	Points	Findings
1	Whether PW No.1 should be recalled for cross-examination ?	Yes.
2	What order ?	Application is allowed.

:: REASONS ::

As to point No. 1

5. P.W. No.1 was present on 29/06/2022 and his examination in chief is recorded on that day. Ld. Advocate for accused No.1 had filed Exh.27 intimating that he is withdrawing his vakalatnama for

accused No.1. Accused No.1 was absent on that day. Witness was present in Court and he had come from Karjat. Therefore no cross order was passed against Accused No.1.

6. As per direction of Hon'ble Apex Court, it is expected that the cross-examination of a witness should be completed on the day of his examination in chief unless for unavoidable reasons matter is adjourned. As per section 311 of Cr.P.C any Court may at any stage of any inquiry or trial or other proceeding under this code can summon any person as a witness or examine any person in attendance. So also a witness can be recalled and re-examined though already examined. The power to be used under this section has to be exercised with due diligence and care.

7. The object of the provision is to do justice not only from the point of view of accused and Prosecution but also from the point of view of orderly society. In present case new vakalatnama has been filed and now accused desires to cross-examine PW No.1. Today PW No.1 is present in Court as Prosecution has called him. If this witness is not recalled then the right of accused to cross-examine the witness will be prejudiced. It is necessary to give proper opportunity to accused to challenge the correctness of Prosecution version and credibility of the witness. The Court has power under section 311 of Cr.P.C. to recall a witness for cross-examination if Court is satisfied that it is for just and proper adjudication of the case. In present case considering principle of natural justice and in the interest of justice it would be proper to allow the application. Therefore point no.1 is answered in affirmative. Hence, I pass following order.

:: ORDER ::

1. Application is allowed.
2. Permission is granted to accused to cross-examine P.W. No.1.

Application is disposed of accordingly.

Panvel,
Dated :- 08/11/2022

Sd/-
(S. C. Shinde)
Asst. Sessions Judge
Raigad-Panvel.