



Received on : 18-04-2022
Registered on: 18-04-2022
Decided on : 08-05-2026
Duration : 04Y 00M 20D

Exh 31

IN THE COURT OF SESSION
SESSIONS DIVISION, SINDHUDURG
AT: OROS

[Presided over by Dr Sudhiir M Deshpande]
SESSIONS JUDGE, SINDHUDURG.

Criminal Revision Application No.14 of 2022
(CNR MHSIo10003012022)

Shubhangi Atmaram Jadhav
Age 55 yrs., Occu. Housewife
R/o At Post Kudal
Ambedkarnagar
Tal. Kudal Dist. Sindhudurg

Applicant

Versus

Santosh Jagannath Jadhav
Age 40 yrs., Occu. Business
R/o At Post Kudal
Ambedkarnagar
Tal. Kudal Dist. Sindhudurg

Opponent

Appearance:

Mr A R Sawant, Ld advocate for the applicant
Mr B B Ranshur, Ld advocate for the opponent

JUDGMENT

(Declared on 8th day of May 2026)

This revision application is filed against the order below Exh 55 in SCC No. 183/2015 passed by the Ld Judicial Magistrate First Class, Kudal. The parties shall be referred to as per their nomenclature before the Trial Court i.e. complainant and accused. Present applicant is complainant, and the opponent is the accused.

2] The facts leading to the present application are like this. The complainant has filed the case against the accused under sections 427, 323, 504, and 506 of IPC. The complainant was examined and her examination-in-chief is Exh 23. Her cross-examination was completed on 06.07.2017. The accused filed application Exh 27 on 13.11.2017 for cross-examining the complainant again. The Trial Court allowed that application vide order dated 13.02.2018. The complainant was cross-examined again on 07.01.2021. After 02.09.2021 many dates were kept for examination of the accused vide section 313 CrPC. On 16.02.2022 when the trial was for 313 examination, the accused filed third application Exh 55 for cross-examining the complainant. The Trial Court allowed the application Exh 55 vide order dated 24.02.2022. Hence, the complainant filed the present revision application.

3] Heard.

4] Mr Sawant, Ld advocate for the complainant

has submitted written notes of argument Exh 28. The gist of the argument is like this. The accused took 41 dates between 12.04.2018 and 28.01.2022 and thereafter, filed application Exh 55 on 16.02.2022. This is a delay tactic by the accused. There cannot be repeated opportunities of cross-examination once cross-examination is complete.

5] Mr Ranshur, Ld advocate for the opponent submits that the Trial Court's order is correct. The revision application is not tenable. He relied on two case laws. He submits that recalling the complainant for cross-examination is not a delay tactic. He submits, on the contrary, the applicant did not pursue the present revision application within a reasonable time.

6] After hearing rival arguments and perusing the documents on the record, following points have arisen for my determination on which, I have given my findings based on reasons on considering the documents and arguments.

Points	Findings
1. Whether the Trial Court's impugned order is correct, legal and proper?	No.
2. Whether the present revision application is tenable?	Yes.
3. What Order?	Revision Application is allowed.

REASONS

As to Point No. 1

7] I have perused the reasoning given by the Trial Court in the impugned order. The Ld Magistrate referred the provision under section 311 of the CrPC and opined that a Court may recall or reexamine any person already examined if his evidence appears to be essential to the just decision of the case. Hence, it was in the interest of justice to give opportunity to the accused to put up his defence. The Trial Court directed the complainant to remain present on the next date for cross-examination without fail and the accused was directed to conduct cross-examination without fail.

8] Mr Sawant has argued that there were about 41 dates before the accused filed a petition Exh 55. According to the complainant the accused is playing delay tactic. However, the counter argument is that the complainant delayed the matter by not pursuing the present revision application which was filed on 18.04.2022.

9] Had the complainant pursued the present revision application promptly, it would not have kept pending for as many as 3-4 years. However, considering the circumstances surrounding the working in Court, only the complainant cannot be blamed for the delay.

10] However, it is pertinent to note that for about

41 dates the accused did not do anything. The case was kept for 313 CrPC examination. The accused had already conducted cross-examination of the complainant twice through his Ld advocate in the past. Moreover, as per the sequence given in the Evidence Act after the examination-in-chief the cross-examination is to be conducted. Once the accused or his advocate gets opportunity to cross-examine they should not leave any stone unturned. Whatever questioning should be done in one continuous spell of cross-examination. Once the cross-examination is declared to be over, the accused cannot take repeated opportunities to cross-examine the witness. Moreover, if such repeated cross-examinations after intermittent gaps are allowed, it would not only amount to parody of judicial process but also it would nurture the cause for judicial delays. Present one is the best example how the accused after taking 41 dates moved the application for cross-examination of the complainant by moving the said application Exh 55. It cannot be forgotten that, in the past also the accused took two opportunities to cross-examine the same complainant.

11] Apart from this, the accused cannot be allowed to exploit the judicial process to suit his purposes. Whatever admissions were to be elicited, could have been elicited by the accused. It is mentioned in application Exh 55 that the cross-examination conducted by the previous advocate missed many things those could not be brought on record. However, this reason is highly non-accepted for

the simple reason that each and every time the accused would appoint new advocate and shall move applications for new cross-examinations. This does not befit the criminal jurisprudence.

12] When a complainant comes to file a case against the accused, the complainant should not be harassed repeatedly by filing such applications. Therefore, there is substance in the argument of the complainant that the accused tried delay tactic. The accused was fully aware for as many as 41 dates that the stage of cross-examination was over. Mere change of advocate cannot bring a change in the merit of the matter.

13] The application Exh 55 did not specifically tell the reasons for cross-examination once again of the complainant. Moreover, the said application itself contends that the matter was posted for 313 examination of the accused.

14] In a nutshell, it can be said that the application Exh 55 is totally devoid of any merit. The Trial Court should have looked at the application Exh 55 from the perspective of the complainant as well. The reasoning given by the Trial Court based on interpretation of section 311 of CrPC is in my opinion not correct. The Trial Court tried to interpret section 311 CrPC but it ought to have made comments on the 41 dates taken by the accused before filing application Exh 55. Trial Courts' order is

totally silent on these 41 dates and their implication on the progress of the trial. In my opinion, therefore, the Trial Court's order is not correct, legal and proper. Hence, I answer the Point No. 1 in the negative.

As to Point No. 2

15] So far as the argument that the impugned order is not unchallengeable in revision is concerned, it needs to be appreciated that delay in trial or any order with perpetuates further delay in the trial affects the right and interest of the complainant. Therefore, in my opinion the order passed by the Trial Court has affected the rights of the complainant and therefore it is not an interlocutory order in the peculiar set of circumstances surrounding the application Exh 55. So far as maintainability is concerned, it is true that ordinarily an order passed under Section 311 of the CrPC is interlocutory in nature.

16] The present case stands on a peculiar footing. The complainant had already been cross-examined twice and the matter had reached the stage of recording statement under Section 313 of the CrPC. Thereafter, after repeated adjournments over several dates, the accused sought further recall of the complainant without disclosing any substantial reason. Thus, the impugned order cannot be treated as a mere routine procedural order, but one having direct impact on the fairness and expeditious conduct of the trial. In the peculiar facts of the case, the

impugned order assumes the character of an intermediate order causing serious prejudice to the complainant and therefore the present revision application is maintainable. Consequently, I hold that the revision application is tenable.

17] In **Sethuraman v. Rajamanickam, LAWS(SC)-2009-3-190**, relied upon by Mr Ranshur, the facts were totally distinguishable since in that case the Trial Court had rejected the application under section 311. Here, the Trial Court has allowed the application under section 311 which has caused prejudice to the complainant in the peculiar set of facts of the present case.

18] In **M/S. Pande Iron Trading Company v. Nasiruddin S/O. Mohamadali Lakhani, LAWS(BOM)-2025-3-62**, again the application under section 311 was allowed and therefore it was held to be an interlocutory order. In the present case the application under section 311 was allowed and as stated earlier the rights of the complainant have affected due to the frequent cross-examinations by the accused and thereafter again asking for cross-examination after spending 41 dates which is not in conformity with the standards of a criminal case. Therefore, I hold that in the peculiar background of facts in which the application Exh 55 was allowed by the Trial Court has caused prejudice to the complainant and affected her rights.

19] Hence, I answer the Point No. 2 in the affirmative.

ORDER

1. The Revision Application is allowed.
2. Send the record of the proceedings to the Trial Court forthwith, along with a copy of this judgment.
3. The Trial Court shall conduct the trial from the stage at which the record of the proceedings was sent to this Court.
4. All parties and their Ld advocates to remain present before the Trial Court on 22.05.2026.
5. Considering the delay already caused in the trial, the Trial Court shall expedite and disposed of the case.
6. The revision application is disposed of in above terms.
7. In the circumstances, no order as to costs.

Sd/-
(Dr Sudhiir M Deshpande)
Sessions Judge
Sindhudurg-Oros

All concerned to act upon digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake v. Krushna Dhake**, MANU/MH0285/2018.