

CNR No :- MHSI100002022024



Summary Criminal Case No. 107/2024

Order Below Exhibit No. 22

The prosecution have filed the present application under section 311 of The Code of Criminal Procedure, 1973 (hereinafter referred as 'CrPC' in short) for recalling of witness No. 2.

02. In short it is contended that, the photographs which were provided by the witness to the Police are left out to be shown to the witness during his evidence due to oversight. If the witness is not shown the said photographs, it will cause injustice and hence, it is prayed that, the witness be recalled for said purpose.

03. The accused opposed the application by filing say on the back-leaf of the application. In short it is contended that, the application is false. The evidence of PW-2 is already completed. Prosecution have not shown the legal difficulty due to which the photographs were not shown at the relevant time and the application is filed only to fill up the lacuna. Basically on these ground it is prayed that, the application be rejected.

04. Perused the application. Heard Ld. A.P.P. Smt. Govekar for prosecution and learned advocate S. P. Desai for accused. They argued as per the contents of the application and say respectively.

05. Before proceeding further, it will be beneficial to mention that, as per section 311 of Cr.PC, at any stage of enquiry, trial or other proceeding, the Court may recall and reexamine any person already examined, if his evidence appear to be essential to the just decision of the case.

06. In the instant case, the prosecution have sought to reexamine PW-2, i.e. Pradeep Parab who is the informant on the ground that, certain photographs were left to be shown to the witness. However, the prosecution have not demonstrated as to why and how such photographs were not shown to the witness during the course of his evidence. The only explanation given by the prosecution is that, due to oversight said photographs were not shown. Such evasive explanation is not acceptable. It is further, necessary to mention that, the prosecution have not pointed out the exact photographs from the charge-sheet which are sought to be shown to the witness. Further, the prosecution have not clearly stated whether such photographs are primary evidence or secondary evidence. It is further important to note that, if such photographs are to be shown are secondary evidence then, whether the certificate as more particularly required as per section 65-B of The Indian evidence Act is produced on record or not is not mentioned in the application. Certainly the photographs in the form of secondary evidence needs to be established as per the said provisions. Considering the same, as mandated by section 311 of CrPC, I do not find the evidence of PW-2 as sought to be recorded by invoking section 311 of CrPC to be essential to the just decision of the case. Hence, the application deserves to be rejected. Accordingly, I proceed to pass the following :-

-:: ORDER ::-

The application is rejected.

(Dictated and pronounced in open Court)

Place : Dodamarg.
Date : 23/01/2026.

(Y. P. Bavkar)
Judicial Magistrate (F.C.),
Dodamarg.