

Order passed below Exh. 159 in ECC 383/25

The present application is filed
U/s. 348 of BNSS.

02] It is the contention of the prosecution that the prosecution has examined 16 witnesses. However during scrutiny of the chargesheet, the prosecution come to know that there are few complaint applications submitted by other three victims and there are payment receipt screenshots on record. However the I.O. failed to ~~examine~~ record their statements U/s. 180 of BNSS. They are victims in this matter and examination of these ~~two~~ witnesses is necessary for just and fair decision of the case. Therefore this applⁿ be allowed.

03] Whereas, this application and its contentions are strongly objected by the Ld. advocate for the accused on the ground that if those witnesses and their statements are necessary then I.O. would have recorded their statements U/s. 180 of BNSS. Now recalling of these

witnesses cannot be permitted to fill up the lacunas. Therefore this application be rejected. The Id. adv. for the accused relied upon the judgment of Hon'ble H.C. Bombay in case of -

Sanjay Vasant Iadam

v/s.

State of Maharashtra.

2015 Cri. L.J. 103 held that

allowing the prosecution to examine new witness as to fill up the lacunas in a prosecution case ^{gives} ~~allows~~ ~~the~~ ~~prosecution~~ unfair advantage to the prosecution and this practice shouldn't be encouraged.

04] Admittedly the Sec. 311 of CrPC doesn't mandates recording of the statement U/s. 161 of CrPC nor provides any embargo on summoning any person as a witness whose statement was not recorded U/s. 161 of CrPC only; what is essential is that evidence of such person is to be essential for the just

decision of the case. In this regard I have perused the application and say filed. Heard both sides and perused record.

05] As per sec. 180(1) of Cr.P.C. Code provides the competent police officer may examine any person actually supposed to be acquainted with facts and circumstances of the case, and sec. 180(3) of Cr.P.C. mandates reducing such statement in writing. It gives benefit to both sides i.e. truthful disclosure of the ~~statement~~ ^{facts} by the person who is examined. However in the instant matter admittedly inspite of the fact the complaint applications of the proposed witnesses along with documentary evidence as to payment to the accused, no statement is recorded. Therefore, though the statement of these witnesses is not

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recorded in the instant matter,
their evidence is very relevant
as they being victims of the
alleged scam of the accused.
Apart from this the complaint
applications of these victims/
witnesses has signature and
seal of Vishrambagh P.S.

Therefore this application by
the prosecution cannot be said
to be filed with intent to
fill up the lacunas, to cause
disadvantage to the ~~prosecution~~ ^{accused}.
These witnesses made disclosure
of the scam took place with
them in their respective
complaint applications, unlike
the facts referred in the
citation submitted by the
Id. adv. for the accused.

In result of above
discussion and with due respect
to the principle laid down in
authority ^{supra}, I am of the
opinion that the accused nowhere

in disadvantageous position if these three witnesses are examined for just and fair decision of the case being victims. The accused will have opportunity to cross examine these witnesses. Hence I am of the opinion that the authority cited by the accused has no applⁿ to the facts of the case before me and thus the order :-

ORDER

- i) Applⁿ is allowed.
- ii) The witness no. 1 to 3 as mentioned in the applⁿ are recalled vide S. 348 of BNSS.

Date :- 05/05/26


Rohini S. Patil
JMFC (Court no. 1) Sangli