

**ORDER BELOW Exh. 55 IN RCC 24/2021**

1. This is an application filed by learned A.PP under section 311 of Cr.PC.. It is submitted that, the prosecution has examined in all six witnesses. In order to prove its case prosecution has to examine two more witnesses namely D.A.Mali, Police Constable, B.N.116 of Police Station Kadegaon, who has recorded the F.I.R. and Dr.Manohar Kachare of Government Medical College and Hospital Miraj who conducted the C.T. Scan of injured. It is necessary for proper adjudication to examine the said witnesses. Hence, present application is filed and prayed to allow the application.

2. The learned counsel for accused strongly opposed the application. It is submitted that, the application filed by learned A.PP is not tenable. The present application is filed only to prolong the matter. The evidence of prosecution was closed and statement of accused under section 313 of Cr.PC. was recorded on 04.01.2025. The learned A.PP and counsel for accused submitted their argument on 12.02.2025. The case was kept for filing citation on 21.02.2025. The learned A.PP has filed said application on 21.02.2025. The name of witnesses is not mention in the witness list. The medical certificate of Dr.Manohar Kachare is not filed in the charge-sheet and no explanation was mentioned in the charge-sheet and present application. The witness can not be examine to fill up the lacuna in the prosecution case. Hence, application be rejected.

3. Read the applicaiton and say. It appears that, accused are prosecuted for the offence punishable under section 341, 325, 324, 323, 504, 506 read with 34 of I.P.C. The charge was framed on 06.09.2022. The prosecution has examined in all six witnesses and given-up three

witnesses. The record shows that, sufficient opportunity was given to the prosecution and thereafter on 04.01.2025 as per submission of learned A.P.P. prosecution evidence was closed. The statement of accused under section 313 of Cr.P.C. was recorded on 15.01.2025. The learned counsel for both sides submitted their arguments on 12.02.2025. The case was kept for filing citation on 21.02.2025. The learned A.P.P. has filed present application on 21.02.2025. The record shows that, no M.L.C. certificate, x-ray report along with x-ray plate of Dr.Manohar Kachare is filed in the charge-sheet. The prosecution has already examined Dr.Vaibhav Patki and he has proved medical certificate Exh.51. The learned A.P.P. filed a present application after taking the hint from the argument of counsel for accused. The medical certificate, x-ray report and x-ray plate is not on record. Therefore, it is clear that, the present application is filed only to fill up the lacuna which is not permissible at the belated stage of trial. Further, there is no reason mentioned in the application as to why it is necessary to examine D.A.Mali, Police Constable, B.N.116, P.S.Kadegaon when the informant has already proved the report Exh.43. It is the duty of prosecution to take proper steps on the given date so that the presence of witness can be secured. The speedy trial is the fundamental right of accused. The prosecution can not prolong the cases without any just and proper reason for unlimited duration. If the prosecution is willing to examine the above two witnesses, the learned A.P.P. shall take the steps accordingly before the final argument but no steps were taken before final argument for that purpose. Further, the evidence of prosecution was closed on the submission of learned A.P.P. Therefore, it is clear that, sufficient opportunity was given to the prosecution. On perusal of present application it appears that, no any reason is

mentioned in the application as to why the witness was not examined earlier.

4. In this context an useful reference can be made to the judgment of Honble Supreme Court in the case of ***Swapan Kumar Chatterjee V/s. C.B.I. (2019) 14 SCC 328*** wherein, it is observed by the Honble Supreme Court that, the power under section 311 of Cr.PC. is not to be exercised if application has been filed as abuse of process of law. Where prosecution evidence has been close and reason for non examination of witness earlier are not satisfactory, resummoning of witness at belated stage would cause great prejudice to the accused and should not be allowed. Further, court can not encourage filing of successive application for recall of witness under section 311 of Cr.PC.. In the present case no reason is mentioned by learned A.P.P. in his application for non examination of witness Dr. Manohar Kachare and D.A.Mali, Police Constable, B.N.116 of P. S. Kadegaon. Therefore, it appears that, learned A.P.P. has not filed the present application at proper stage and has been filed at belated stage without any just and proper reason in vague manner. Hence, in the absence of any just and proper reason the application can not be allowed merely because the learned A.P.P. has filed the application. Hence, I pass the following order.

**ORDER**

1. Application Exh. 55 is hereby rejected.

Sd/-XXX

(D.S.Sharma)  
J.M.F.C.Kadegaon,  
Dist.Sangli.

Date : 30.04.2025