

**ORDER BELOW EXHIBIT-169**

The accused moved an application under 311 of the Code of Criminal Procedure, 1973(Cr.P.C. for brevity) for giving them permission to recall PW-7 for cross examination. They also prayed for giving them permission to lead evidence. They submitted that PW-7 has given report to PS Barshi City upon which N.C. case 961/2008 was registered against these accused. Now they want to cross examine to PW-7 on account of this registration of non cognizable case against them. Even they want to examine to the station diary officer of PS Barshi City who registered N.C. case against the accused. Alleged permission is essential to the just decision of the case. Hence prayed accordingly. The ld. APP strongly opposed the application. He submitted that now the case is for argument. This application moved at the fag end of the trial. The accused has not given defence evidence when the statement of accused under section 313 of Cr.P.C. was recorded. Now the stage has been gone. Hence prayed for rejection of the application.

02. Heard both parties. The accused wants to cross examine to PW-7 on the basis of so called N.C report dated 14/09/2008 which registered against the accused on the basis of report given by Amruta Anil Khardekar. Alleged document is already available on record at Article 'A'. The alleged case arising out of N.C. no.961/2008. However the police station officer has not made investigation. So the informant filed complaint vide Cri.M.A. No.424/2008 in this Court and this Court on 19/09/2008 directed to PS Barshi City to register the crime and investigate the case under section 156(3) of Cr.P.C. The officer in charge of police station Barshi City filed charge sheet against the accused after completion of investigation. This means this case is arising out of N.C. no.961/2008 which was registered at PS Barshi City. This means there is no new

evidence on record. However, the accused want to cross examine to PW-7 on this NC report because she is the informant of the said NC report. Record shows that the accused has not cross examined to PW-7 on this NC report. So fair opportunity required to be given to the accused for cross examination of PW-7.

03. No doubt discretion is vested with the court as per section 311 of Cr.P.C. for recalling to any witness whose evidence is already recorded. However I am of the opinion that it is necessary to call PW-7 for cross examination for just decision of the case. Even it is necessary to call to the station diary officer of PS Barshi City who at relevant time registered NC case against these accused on the basis of information given by PW-7. If alleged permission would be given then the prosecution has right to cross examine to the station diary officer. Considering this application Exh.169 deserves to be allowed. Hence, I proceed to pass following order;

**ORDER**

- 1) Application Exh.169 is allowed.
- 2) Issue summons to PW-7 for cross examination on payment of Bhatta of Rs.500/- to PW-7.
- 3) Issue summons to the station diary officer of PS Barshi City for evidence with direction to bring the record of NC case no.961/2008 registered at PS Barshi City on 14/09/2008 on payment of Bhatta and PF.

Date : 06/06/2023.

( S.B. Vijaykar )  
Judicial Magistrate F.C., Barshi.

**C E R T I F I C A T E**

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	S.R. Barangule
(b)	Court	:	S.B.Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order signed by P.O. on	:	06/06/2023
(d)	Judgment /Order uploaded on	:	06/06/2023