

MHWS040011882020 	<u>ORDER BELOW EXH.19</u> <u>IN RCC NO. 149/2020</u> <u>State Vs. Mahadev Keshav Gaikwad</u>
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1. This is an application filed by the prosecution under Section 311 of the Code of Criminal Procedure for issuance of summons to the informant Pournima Sandeep Sawadh and the Investigating Officer Chhote Bali Pappuwale.

2. It is the case of the prosecution that the matter was fixed for recording the statement of the accused under Section 313 of the Code of Criminal Procedure. It is submitted that the informant Pournima is a lady witness in the present crime and that summons had already been issued to her on 29.09.2025. Therefore, it is prayed that summons be issued to the informant and the Investigating Officer.

3. The accused has strongly opposed the application. It is contended that the matter is old and has been pending since the year 2020. Charge was framed below Exh.10 on 23.09.2025. The prosecution examined four witnesses and gave up two witnesses. Thereafter, the prosecution evidence came to be closed by order below Exh.1 dated 21.01.2026. It is further submitted that after closure of the prosecution evidence, the matter was kept for recording the statement of the accused under Section 313 of the Code of Criminal Procedure and the said statement has already been recorded. According to the accused, at such a belated stage, the present application is filed only with a view to fill up the lacuna in the prosecution case and to prolong the proceedings. Hence, the application is liable to be rejected. In support of the said contention, reliance is placed on the decision in *Mir Mohd. Umar and others Vs. State of West Bengal, (1989) 4 SCC 436*.

4. Heard learned A.P.P. S. M. Bakaliwal for the State and learned counsel R. M. Rokade for the accused. Perused the application, say and record.

5. Section 311 of the Code of Criminal Procedure confers wide discretion upon the Court to summon any person as a witness, or to recall and re-examine any person already examined, at any stage of inquiry or trial, if such evidence appears to be essential for the just decision of the case. However, such power is to be exercised judicially, cautiously and only when the circumstances so warrant. The provision cannot be invoked as a matter of course, especially when the party seeking such relief had sufficient opportunity to lead the evidence earlier.

6. In the present case, charge was framed on 23.09.2025. Thereafter, the prosecution examined four witnesses and gave up two witnesses. Ultimately, by a specific order dated 21.01.2026, the prosecution evidence was closed. Thus, sufficient opportunity was already available to the prosecution to examine all its material witnesses, including the informant and the Investigating Officer. Even after closure of evidence, no immediate or diligent steps were taken by the prosecution for securing their presence. On the contrary, the matter proceeded further and the statement of the accused under Section 313 of the Code of Criminal Procedure also came to be recorded.

7. The stage at which the present application is filed is of considerable importance. Once the prosecution evidence is closed and the statement of the accused under Section 313 of the Code of Criminal Procedure is recorded, reopening of the prosecution case should not ordinarily be permitted unless the Court is satisfied that such evidence is indispensable for a just decision of the case and that the non-examination of such witness was due to circumstances beyond the control of the

prosecution. In the present matter, no sufficient or satisfactory reason is assigned by the prosecution as to why these witnesses were not examined prior to closure of evidence. Mere statement that summons had been issued earlier is not sufficient to explain the delay or to justify reopening of the prosecution case at this stage.

8. It is also material to note that from the evidence of PW-2 Kailas Mahadev Sawadh at Exh.14 and PW-3 Lalita Kailas Sawadh at Exh.15, it has come on record in their cross-examination that there was divorce between the informant Pournima and Sandip. PW-2 has further stated that the informant has been residing at her matrimonial house since the last 2 to 3 years. Despite this, the prosecution has failed to place on record the current address of the informant or to show that sincere and effective efforts were made to secure her presence before closure of evidence. This circumstance also reflects lack of due diligence on the part of the prosecution.

9. Further, allowing such application after recording the statement of the accused under Section 313 of the Code of Criminal Procedure would cause prejudice to the accused and would amount to giving an opportunity to the prosecution to fill up the lacuna in its case. The Hon'ble Supreme Court in *Mir Mohd. Umar and others Vs. State of West Bengal* has observed that recalling witnesses after recording the statement under Section 313 of the Code of Criminal Procedure may amount to filling up lacuna in the prosecution case. Therefore, the facts of the present case require cautious exercise of power under Section 311 of the Code of Criminal Procedure.

10. In view of the above discussion, this Court is of the opinion that the prosecution had ample opportunity to examine the said witnesses before closure of evidence. No exceptional circumstance is shown for

exercising the discretionary power under Section 311 of the Code of Criminal Procedure at this belated stage. Hence, the application deserves to be rejected. Hence, I proceed to pass following order.

ORDER

1. Application Exh.19 filed by the prosecution under Section 311 of the Code of Criminal Procedure stands rejected.
2. Proceed further.

Date : 08/04/2026

(Khwaja. C. Kalal)
Judicial Magistrate First Class, Mangrulpir,
Tal. Mangrulpir, District Washim.

<u>CERTIFICATE</u>		
I affirm that the contents of this P.D.F file Judgment/ Order are same word to word as per the original order.		
Name of Court	:-	Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim.
Presiding Officer	:-	Khwaja C. Kalal
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