

CNR No. MHCH040005232023



Order below Exh. 253
in
Spl. (Poc) Case No. 52/2023
State of Maharashtra
through
Police Station Warora
Vs.
Akshay Ankush Bawane & Ors.
(Passed on 13th day of August, 2026)

The prosecution has filed this application to put leading questions to the witness under section 154 r/w section 145 of the Indian Evidence Act.

02] According to the prosecution, it has examined victim as its witness no.11 however during cross-examination victim resiled from her previous statement. Therefore, it is necessary for the prosecution to put her leading questions under section 154 r/w section 145 of the Indian Evidence Act. With this, prosecution has prayed for permission.

03] The application is resisted by accused stating that the evidence of victim is over. She is discharged from the witness box and therefore, at this stage this application is not maintainable. The provisions of section 154 r/w section 145 of the Indian Evidence Act applies only during the evidence of witness and not

after discharge of the witness. With this, accused prayed for rejection of the application.

04] The Ld. Advocate for the accused in support of his arguments placed reliance of **Pushpendrasinh @ Paresh Vaghela Vs. State of Gujarat Date of Judgment 08/02/2013**. In this case in para no.18 the Hon'ble High Court Gujarat observed that, *“considering the ratio laid down by Hon'ble Apex Court, this court as well as other High Courts, the powers under Section 154 of the Evidence Act is to be exercised in a judicious manner. In the instant case, the witness has stated more than what he has stated in the examination-in-chief. The defence has elicited more facts than what the Ld. Assistant Public Prosecutor has asked the witness in the examination-in-chief. Though it is true that there is no definite rule of universal application as to when and in what circumstances, the Magistrate can exercise the jurisdiction under section 154 of the Evidence Act, in the facts and circumstances of the present case, only because the witness has stated further than what he has stated in the police statement and examination-in-chief, it cannot be said that the witness has shown hostility to the prosecution. This Court is therefore of the opinion that the Magistrate has not exercised discretion in a judicious manner. The Magistrate ought to have considered the case for re-examination of the said witness as provided under section 138 of the Evidence Act. Considering all these in totality, it cannot be said that the Magistrate has rightly exercised the discretion”*.

05] Having heard both the sides at the outset it is necessary to see the provisions of section 154 of the Evidence Act. It says the Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. In the case in hand witness has not left the Court only she is discharged by the court from witness box, at this juncture this application is moved. According to the accused after discharge of witness this application is not maintainable. However, said contention of accused is not sustainable in the eyes of law as provision of section 154 of the Evidence Act is silent when the party who calls witness can cross examine its own witness. No stage for cross-examination of witness is provided in section 154 of the Evidence Act. The citation relied upon by accused itself is speaking wherein the Hon'ble Gujarat High Court observed that it is true that there is no definite rule of universal application as to when and in what circumstances the Magistrate can exercise the jurisdiction u/s 154 of the Evidence Act. In peculiar facts of the case that Hon'ble Gujarat High Court held that witness was not totally resiled from initial statement but stated additional facts, despite of that the Magistrate exercise discretion and permitted to cross examine the witness. In that scenario the Hon'ble High Court gave the verdict.

06] However, in the case in hand in cross-examination the victim, she has answered all the questions of defence in affirmative. It shows that in cross-examination she resiled from her initial statement. In such state of affair, I find it appropriate to

allow prosecution to put leading questions to the victim. Hence I pass following order :-

ORDER

1. Application is allowed.
2. Prosecution is permitted to cross examine PW-11.

Warora.
Dt. 13/08/2026

(Atul K. Shah)
Addl. Sessions Judge,
Warora.