

ORDER BELOW EXHIBIT NO.1202.
(CNR No. MHOS03-000396-2002)

Accused No.7 viz. Sanjay Hariram Agrawal has filed present application and thereby prayed to set aside No Cross Order passed against him on dated 17.11.2014 in respect of P.W. No. 17 viz. Sunil Digambar Patil vide Exh.786 and further to recall P.W. No. 17 viz. Sunil Digambar Patil for the purpose of recording of his cross-examination.

2. It is contended that, the present matter is fixed for defence evidence. Further, the prosecution had examined P.W. No. 17 viz. Sunil Digambar Patil on 17.11.2014. On that day, the earlier Advocate of the accused No. 7 had moved an adjournment application which came to be rejected and No Cross Order came to be passed. Thereafter, further proceeding in the present matter came to be stayed by the order of Hon'ble High Court for a period of about 10 years, and thereafter, by the order of Hon'ble Supreme Court of India for about one year till 19.05.2025 and thus, the trial remained in abeyance during the above said period. After vacation of this stay order, prosecution examined it's remaining witnesses and thereafter statement of accused under Section 313 of Cr.P.C. came to be recorded and now the matter has been reached the stage of defence evidence.

3. It is further contended that, the earlier Advocate for the accused has, in the meantime, suffered serious medical issue and

therefore, the accused constrained to change his advocate. New advocate is appointed by the accused No. 7 on 10.06.2026. When the new Advocate for the accused recently inspected the entire record, then it comes to his knowledge that, P.W. No.17 had not been cross-examined. The P.W. No. 17 is a material witness and effective cross-examination of the said witness is essential for enabling the accused to put forth his defence and to test the veracity of the said witness.

4. It is further contended that, failure to cross-examine P.W. No. 17 was not deliberate but it was the result of rejection of adjournment application, subsequent long drawn stay orders and serious medical condition of the earlier advocate. Further, recalling of the said witness for cross-examination will not cause prejudice to the prosecution, on the contrary, it will enable the Court to have full and fair adjudication of rival contentions and to reach a just decision in the matter. Hence, the accused has filed the present application to set aside No Cross Order, dtd. 17.11.2014 passed in respect of P.W. No.17 and further to recall him for the purpose of recording of his cross-examination on behalf of accused No.7. Hence, the present application.

5. Prosecution has filed it's say on the backside of the application and thereby taken strong objection on the present application. It is contended that, in the present matter, the accused No. 7 had moved an adjournment application on 25.11.2014, which came to be rejected on material ground i.e. the matter was time bond by the Hon'ble Supreme Court. Hence, considering the said fact, the present application is liable to be rejected. Hence,

prosecution has prayed to reject the application.

6. Heard both sides at length. Learned Advocate Shri. S.S. Tambe for accused No. 7 has argued that, cross-examination is a substantive right of the accused and it is an integral component of the right to fair trial guaranteed under Article 21 of the Constitution of India. Further denial of an effective opportunity of cross-examination of material prosecution witness would cause grave prejudice to the accused and it will seriously impact the fairness of the trial. He has further argued that, the Court is vested with very wide powers under Section 311 of Code of Criminal Procedure to summon any person as a witness, or to recall and re-examine any person already examined, at any stage of the any inquiry, trial or other proceeding, if such evidence appears to be essential for the just decision of the case. He has further argued that, the power under Section 311 of Cr.P.C. must be exercised to advance the cause of justice and to ensure a fair trial, and further, where denial of cross-examination would result in miscarriage of justice, recall of prosecution witness may be permitted, even at the later stage of the trial. Lastly, he has argued that, the failure to cross-examine P.W. No. 7 was not voluntary or deliberate but was the result of the circumstances set out in the application. Hence, he has argued to allow the application. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court of India in the following case:-

Sovaran Singh Prajapati Versus State of U.P,
reported in Law Finder Doc Id# 2695295.

I have gone through the above ruling minutely and carefully. In the above said judgment, Hon'ble Apex Court has laid down following guidelines:-

"30.1 A perusal and consideration of the aforesaid decisions reveal the following principles as governing the application of Section 311 Cr.PC. :

(a) The Section is divided into two parts, the first being directory with the use of the word 'may' and the latter being mandatory with the use of the word 'shall'.

(b) The power of the Court is couched in the widest terms possible with no express limitation thereon.

(c) The exercise of such power is not only the prerogative but also the duty of the Court, in connection with a witness who may be considered absolutely necessary, in the interest of justice.

(d) This power is to be used both for the benefit of the prosecution and the defence. To summon a witness because it serves the case of one of the parties and not the other, would be improper.

(e) This power can be exercised at any stage of proceedings, i.e. enquiry, trial or any other.

(f) Power is to be exercised judiciously since wider the power, greater the requirement of the application of a judicial mind.

(g) If a witness so-called under this power, gives evidence against the complainant, the latter should be given an opportunity to cross-examination. This power arises not under Section 311 but under the Indian Evidence Act, 1872.

(h) A witness cannot be recalled by the use of this power to simply fill up a lacuna in the case of the prosecution."

In the light of above said guidelines the available material is to be scrutinized.

7. Perused the application and say thereon. Perused the entire record of the case. Before going into the merits of the matter, first of all it is necessary to mention here that, the present matter is of the year 2002. Further, Hon'ble Supreme Court of India in Petition(s) for Special Leave to Appeal (Cri) (Nos.)10625-10626/2024, vide its order dated 09.01.2026 has specifically directed to this Court to make an endeavor to dispose of the matter within a period of six months after framing the charges. The charge has been re-framed on 15.01.2026 and therefore, as per the directions of Hon'ble Apex Court, the present matter is required to be disposed of **on or before 15.07.2026**.

8. Now, so far as, present application is concerned, it appears that, the accused No. 7 has filed present application under Section 311 of Cr.PC. for recalling of P.W. No. 17 viz. Sunil Digambar Patil, who was examined on 17.11.2014 vide Exh.786. According to the accused failure to cross-examine P.W. No. 17 was not deliberate but it was the result of rejection of adjournment application, subsequent long drawn stay orders and serious medical condition of the earlier advocate. Hence, it appears that, accused is seeking permission to cross-examine P.W. No. 17 by setting aside No Cross Order, dtd. 17.11.2014 on the following three grounds:

i] **Rejection of adjournment application (Exh. 791).**

Perusal of record and roznama shows that, the original charge was framed against all the accused on 08.05.2014 vide Exh.641. Thereafter, prosecution examined in all 22 witnesses till 09.12.2014. P.W. No. 17 viz. Sunil Digambar Patil was examined on 17.11.2014 vide Exh.786. Further, it appears that, the accused No. 7 moved an application for adjournment vide Exh. 791 which came to be rejected by the Court and thereafter No Cross Order came to be passed against the present accused. The relevant portion of the order is reproduced as under.

Order below Exh.791.

xxx

xxx

Perused the application. Say filed by Special P.P. It is material to note that, the witnesses are coming from Mumbai. They had repeatedly came to the Court in this case three times. In this case, Hon'ble Apex Court has directed to dispose of the matter on or before 31st October, 2014. It is material to note that, as per the request of Accused No. 7 documents were also called, which is required for cross-examination. Witness also produced the said document today. The reasons stated in the application does not appear to be convincing one. Considering the urgency in the matter, application ought to be rejected. Hence, I proceed to pass the following order.

Order

- 1) The application is rejected.*
- 2) No order as to costs.*

Dtd. 17.11.2014

(xxx)

*Chief Judicial Magistrate,
Osmanabad.*

Hence, it appears that, the adjournment application filed by accused No. 7 vide Exh.791 came to be rejected and No Cross Order came to be passed against accused No. 7. Further it appears that, before passing No Cross Order, the witness had come thrice in the Court from Mumbai, which shows that, sufficient opportunities were already granted to the accused which were not availed by him. Now, it appears that, after lapse of near about 11 years, the accused has filed present application for setting aside No Cross Order passed on 17.11.2014. There is gross delay in moving the application.

ii] Subsequent long drawn stay orders.

The accused has stated that, he could not move the present application earlier because after passing of the No Cross Order, dtd. 17.11.2014, further proceeding in the present matter came to be stayed by the order of Hon'ble High Court for a period of about 10 years, and thereafter, by the order of Hon'ble Supreme Court of India for about one year till 19.05.2025 and thus, the trial remained in abeyance during the above said period. However, the said contention cannot be accepted for the simple reason that, the prosecution has examined P.W. No. 17 on 17.11.2014 and thereafter prosecution has examined P.W. No. 18 to 20 on 01.12.2014, P.W. No. 21 and 22 on 09.12.2014 and the accused was present along with his advocate during the examination of above said witnesses. He either adopted the cross-examination of the said witnesses conducted by other advocates representing other accused or declined to conduct the cross-examination. Hence, it appears that, after examining P.W. No. 17, the matter was not

immediately stayed and the accused was having sufficient opportunity to make an application for setting aside the order dated 17.11.2014. Therefore, the contention of the accused that he could not file an application to set aside No Cross Order due to stay of the Higher Courts cannot be accepted. Admittedly, the matter was stayed by the Hon'ble Bombay High Court vide order dated 19.12.2014 in Criminal Application No. 1022/2014 and thereafter in view of the order of Hon'ble Apex Court dated 20.11.2023 the matter proceeded further. Thereafter, again the matter was stayed by the order of Hon'ble Supreme Court of India in Transfer Petition, dtd. 22.04.2024. The said stay order is vacated by the Hon'ble Supreme Court of India on 19.05.2025 by dismissing the Transfer Petition Cri. No. 426/2024 with T.P. (Cri.) No. 358/2024 vide its order dt. 19.05.2025. Hence, since 19.05.2025 till today, the matter is pending before this Court for trial. Thereafter, in view of the application filed by the present accused, the charge is re-framed on 15.01.2026. After re-framing of charge also, the accused No. 7 has not filed the present application. Thereafter, the matter posted for recording of his statement under Section 313 of Cr.P.C. The record also shows that, since, 17.11.2025 till 10.06.2026, the present case was pending only for recording of statement of this accused U/sec. 313 of Cr.P.C. The record also shows that the accused No. 7 was avoiding to record his statement on one or other pretext. Finally, his statement under Section 313 of Cr.P.C. came to be recorded on 10.06.2026 and matter posted for defence evidence. At this stage, the accused moved the present application. Hence, it appears that, there was gross delay in filing the present application on the part of the

present accused only. Hence, the ground mentioned by the accused that, he could not file the application within reasonable time due to the stay orders of the Higher Courts cannot be accepted.

iii] Serious medical condition of the earlier advocate.

The last ground mentioned by the accused for the delay is serious medical condition of the earlier advocate. The said ground is also not proper for the reason that, after the hospitalization of his earlier advocate, the other advocates from the office of his earlier advocate have conducted the matter before this Court. Further, on certain occasions the accused No. 7 had also engaged the counsels appearing before Hon'ble High Court and Hon'ble Apex Court for arguing the applications filed by him and lastly, he appointed the present advocate who has filed the present application. Hence, it cannot be said that, due to illness of his earlier advocate, the accused could not file the present application earlier. The other advocates were continuously representing him in the present matter. Hence, the above said ground is also not proper.

9. In view of above discussion, it becomes clear that, inspite of having knowledge of the fact that, the present matter is time bond and **as per the directions of Hon'ble Apex Court, present case is required to be disposed of on or before 15.07.2026**, the accused is using delayed tactics only to prolong the matter. Further, the accused was having sufficient opportunity to move the application earlier, he failed to do so. There is gross delay in filing the present application. The application appears to be filed intentionally in order to cause delay in the matter. Hence, in view

of this, the application filed by accused No. 7 is liable to be rejected. In view of above discussion, I passed the following order.

ORDER

The application at Exh.1202 is rejected.

Date :- 04/07/2026.

(**Smt. Pradnya V. Medhe**)
Chief Judicial Magistrate,
Osmanabad.