

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Criminal Application No.3305 of 2015
In
Criminal Writ Petition No.246 of 2015**

Deepak s/o Pundalik Ingle. **.. Applicant.**

Versus

The State of Maharashtra. **.. Respondent.**

Shri. Rupesh A Jaiswal, Advocate, for applicant.

Shri. P.N. Mule, Additional Public Prosecutor, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 26th JUNE 2015

ORDER:

1) The proceeding is filed for relief of extension of time fixed for making application to the Sessions Court for praying to recall witnesses for further cross examination. This Court in Criminal Writ Petition No.246 of 2015 has granted permission by order dated 17-3-2015 and the accused was given opportunity to file application seeking recall of the witnesses within two weeks from the date of the order. Hamdust of this order was granted. It appears that under various pretexts application was given in the

Sessions Court on 23-3-2015 and then adjournment was sought and again application for adjournment was made on 17-6-2015.

2) In the application at Exhibit 87 filed on 17-6-2015 the accused contended that within stipulated period he could not file application due to genuine difficulty and requested for further time by submitting that he wants to file application in the High Court for extension of time fixed by this Court in the aforesaid order. Thus till 17-6-2015 the application for recall of witnesses was not filed.

3) The order made by this Court on 17-3-2015 shows that, request for recalling of prosecution witnesses - PW 1, PW 2 and PW 6 was considered, they were all eye witnesses and the accused had come with contention that it was not possible for him to pass necessary instructions to his Advocate and due to that, cross-examination of these witnesses was not properly made on material aspects. This contention itself was very vague. In spite of these circumstances the Court gave permission to file such application. In any case it was up to the trial Court to consider it on merits. The case is of 2010, witnesses

were examined in the year 2011. Record of the depositions of these witnesses is available in Writ Petition No.246/2015. The witnesses were extensively cross examined. Then application was moved before the trial Court. The trial Court allowed the application to the extent of PW 6 with cost of Rs.1000/- by order dated 12-11-2013. It appears that new Advocate was engaged by the accused and then such application was moved. This order in respect of PW 6 was not used and then again application was moved and then Writ Petition No.246 of 2015 was filed. Thus it can be said that tactics were played to protract the trial and delay the decision of the case.

4) The provisions of section 309 of the Code of Criminal Procedure is made with particular purpose. Criminal Court makes noting of the evidence. It is always desirable that the Judge who recorded the evidence appreciates it. Though everything in respect of the evidence given in the Court and the conduct of the witness is expected to be recorded in strict sense during recording of the evidence, Judge forms opinion regarding

the witnesses of the prosecution and so it is always desirable that the Judge who recorded the evidence decides the case.

5) In the present matter it can be said that the accused virtually succeeded in protracting the trial and in effect avoiding the decision from the Judge before whom evidence was recorded. Tactics are played in the cases in which there is evidence against and accused. Courts are expected to see that parties are not allowed to play such tactics. The record of the present case shows that every attempt was made by the accused, defence, with particular purpose and it can be said that they succeeded to most of the extent. They are again trying to play such tactics. This Court holds that it is not a case where permission can be given to recall the witnesses in view of the aforesaid circumstances. They are bound to play further tactics. In the result, the application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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