

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 35 OF 2015

Shri Sandeep Kothavale
Major of Age, Service,
R/o House No. 72, Aroba
Dhargal Pernem Goa
(Presently in Judicial Custody
Sub Jail Sada Vasco Goa) .. Applicant

Versus

1. The Police Inspector
Pernem Police Station
Pernem Goa.
2. Public Prosecutor
High Court of Bombay at Goa
Althino Panjim Goa .. Respondents

Mr. Rohan Dessai, Advocate for the applicant.

Mr. M. Amonkar, Additional Public Prosecutor for the respondents.

CORAM :- C. V. BHADANG, J.

Date : 8th April, 2015.

ORAL JUDGMENT :

Admit.

2. Mr. Amonkar, learned Additional Public Prosecutor
waives service for the respondents.

3. Heard finally, with the consent of the learned Counsel

for the parties.

4. The applicant herein is the accused in Sessions Case No. 18/2013 under Sections 452, 302 and 504 of Indian Penal Code (I.P.C., for short) pending before the Principal District and Sessions Judge, Panaji. It appears that a medical witness being PW13 Dr. Jaya Karmali was examined on behalf of the prosecution on 17/10/2014 and on account of the absence of the defence Counsel, the said witness could not be cross-examined. The learned Sessions Judge, therefore, closed the evidence. It appears that the applicant filed an application purportedly under Section 311 of the Criminal Procedure Code (Cr.P.C.) for recalling PW13 Dr. Jaya Karmali. This was objected to on behalf of the prosecution on the ground that trial program was fixed well in advance. The applicant accused as well as his Counsel knew that the witness is summoned and will be appearing for recording his evidence. According to applicant, Advocate Shashank Samant was appearing for the accused, however, due to illness, he was not in a position to attend the Court. Hence, the applicant had engaged Advocate Sangram Dessai. However, on the ground of some prior engagement, he was unable to remain present before the Court. It is in these circumstances that the evidence of the concerned witness came to be closed.

5. The learned Sessions Judge found that Advocate Shashank Samant was not appearing for the applicant and Vakalatnama was signed by Advocate V. P. Sangelkar and Advocate Rohan Dessai. It is, thus, found that the reason of illness of Advocate Shashank Samant cannot be taken into consideration. The learned Sessions Judge also found that program was fixed well in advance and in the absence of any acceptable reason for the Counsel for remaining absent, the application cannot be allowed.

6. Shri Amonkar, learned Additional Public Prosecutor submitted that appropriate orders may be passed.

7. I have considered the rival circumstances and the submissions made.

8. It would be pertinent to note that under Section 311 of Cr.P.C. wide powers and discretion is conferred on the learned Sessions Judge to recall any witness, who has already been examined, if the evidence of the said witness is essential to the just decision of the case. The applicant is facing prosecution for the offences punishable under Sections 452, 302 of I.P.C. Considering the overall circumstances and the concession on behalf of the respondent State, I find that for fair trial, an

opportunity can be granted to the applicant to cross-examine the witness, namely PW13 Dr. Jaya Karmali. In such circumstances, the following order is passed :

- (i) The Revision Application is allowed.
- (ii) The impugned order dated 26/03/2015 is hereby set aside.
- (iii) The application under Section 311 of Cr.P.C. is allowed.
- (iv) The learned Sessions Judge shall recall the witness namely PW13 Dr. Jaya Karmali and permit the applicant to cross-examine the said witness. This will be subject to the applicant depositing costs of Rs.2,000/- before the Sessions Judge.

C. V. BHADANG, J.

SMA