

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL APPLICATION NO.243 OF 2014

## IN

## CRIMINAL APPEAL NO.1262 of 2011

Nana Gitaji Gardare

.. Applicant

*Versus*

The State of Maharashtra

.. Respondent

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Mr.Uday Warunjikar, Advocate for the applicant.

Ms.R.M.Gadhvi, APP for the Respondent State.

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**CORAM : ABHAY M. THIPSAY, J.****DATED : 19<sup>th</sup> NOVEMBER 2015**

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**P.C. :**

1            Heard Mr.Uday Warunjikar, learned counsel for the applicant. Heard Ms.R.M.Gadhvi, learned APP for the State.

2            The Appeal filed by the appellant challenging his conviction and sentence imposed upon him, is pending. The applicant, during the pendency of the Appeal, made an application praying that further evidence be directed to be taken as contemplated under section 391 of the Code of Criminal Procedure (for short 'the Code') The said application was rejected by this Court by an order dated 13<sup>th</sup> September 2012 (Coram K.U. Chandiwal, J). By the present application, the applicant is seeking a review or recall of the said order.

3           The said order was passed after hearing the learned counsel for the applicant/appellant. Review of such order is not permissible. Though a distinction between review and recall is recognized, this does not seem to be a case where there are grounds for recalling the said order.

4           Nevertheless, the Appeal filed by the appellant is still pending. Section 391 of the Code empowers the Appellate Court to take further evidence or direct it to be taken, if it thinks additional evidence is necessary.

5           It would be open for the applicant/appellant to urge before the Court at the time of the hearing of the Appeal that taking of additional evidence is necessary in the present case.

6           With this observation, the application for review/recall is, however, rejected.

7           As the Appeal is ready for final hearing, it is directed to be listed, as such, on 7<sup>th</sup> January 2016.

**(ABHAY M.THIPSAY, J)**

**CERTIFICATE**

**Certified to be true and correct copy of the original signed  
Judgment/Order.**