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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION**

**CRIMINAL APPLICATION NO. 337 OF 2014
IN
CRIMINAL APPEAL NO. 618 OF 2012**

Rashid Ali Sahadat Ali.

... Applicant.

V/s.

The State of Maharashtra.

... Respondent.

Ms. Rebecca Gonsalvez for the Applicant.

Mr. H.J. Dedhia, APP for the State.

**CORAM : P.V. HARDAS &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.**

JANUARY 21, 2015.

P.C. :-

This is an application by which the Applicant/Original Accused No.3 who stands convicted for an offence punishable under Section 143, 147, 149, 342 and 302 r/w. 34 of the Indian Penal Code in Sessions Case No.42 of 2011 which was decided by the Additional Sessions Judge, Mumbai on 9.5.2012. The Applicant alongwith the other accused being aggrieved by the conviction and sentence have

preferred Criminal Appeal No. 618 of 2012 which is pending in this Court.

2. It appears that the Applicant raised a plea that he was a juvenile in conflict with law on the date of commission of offence and therefore, was entitled to the benefit flowing from the Act. An inquiry was accordingly conducted by the Additional Sessions Judge, Greater Bombay in Misc. Application No.382 of 2013 holding that the Applicant was a juvenile in conflict with law on the date of the incident as he was aged 17 years 10 months and 26 days on the date of the offence i.e. on 14.10.2010. The Applicant has filed the present Application seeking a relief of quashing and setting aside the sentence imposed on the Applicant in Sessions Case No.42 of 2011 in the light of the order passed in Misc. Application No.382 of 2013 dated 21.2.2014 by the Additional Sessions Judge, Greater Bombay. The Applicant has also prayed that necessary directions be issued for release of the Applicant forthwith.

3. In response to the present Application, the learned APP representing the Respondent – State has filed an affidavit

contending that the Respondent was not given an opportunity of cross-examining the witnesses examined by the Trial Court. It is also urged before us that the evidence of the witnesses without being subjected to cross-examination could not have been relied upon by the Additional Sessions Judge, Greater Bombay while allowing Misc. Application No. 382 of 2013. The aforesaid stand is contested on behalf of the Applicant as the Applicant contends that an inquiry which is contemplated under the Act does not take in its fold the right of cross-examination on behalf of the opposite party.

4. Ms. Rebecca Gonsalvez, learned Counsel for the Applicant states before us on instructions from the Applicant that without prejudice to the contention of the Applicant that the APP was not entitled to cross-examine the witnesses, the learned Counsel states that the order impugned may be set aside and the matter be remitted back to the Additional Sessions Judge, Greater Bombay for giving an opportunity to the Respondent of cross-examining the witnesses. It is also brought to our notice by the learned Counsel for the Applicant that PW-3 Ashfaq Ahmed Irshadali, a Village Development Officer, has expired after the passing of the order which is

impugned in the present Application. The learned APP states that the Respondent would like to examine some other witnesses in order to prove the extract of the Pariwar Register maintained by the Gram Panchayat, Kishanpur, Mafi which was proved by PW-3 Ashfaq Ahmed Irshadali.

5. Due to the consent of the Applicant for remitting the matter back to the Trial Court giving an opportunity to the Respondent of cross-examining the witnesses, we quash and set aside the impugned order and remit the matter back to the Additional Sessions Judge, Greater Bombay for a decision afresh after giving opportunity to the Respondent/APP of cross-examining the witnesses. Since PW-3 Ashfaq Ahmed Irshadali has expired and would not be available for cross-examination, we give an opportunity to the Respondent of submitting a name of any other witness for proving the extract of the Pariwar Register maintained by the Gram Panchayat, Kishanpur, Mafi. Such name shall be disclosed by the Respondent on the date on which we direct the parties to appear before the Additional Sessions Judge, Greater Bombay.

6. Resultantly therefore, this Application is dismissed and the matter is remitted back to the Trial Court for a decision afresh in accordance with law after giving an opportunity to the Respondent of cross-examining the witnesses as well as an opportunity to the Respondent of disclosing the name of any other witness in place of deceased PW-3 Ashfaq Ahmed Irshadali for proving the extract of the Pariwar Register maintained by the Gram Panchayat Kishanpur, Mafi. The Additional Sessions Judge, Greater Bombay shall issue summons to the witness whose name shall be disclosed by the Respondent and after recording his statement, permit the Respondent to cross-examine him. We further direct the Additional Sessions Judge, Greater Bombay to expeditiously complete the inquiry and remit the report to this Court. Parties therefore shall appear before the Additional sessions Judge, Greater Bombay on 10th February 2015 on which date the Respondent shall disclose the name of witness to be examined in place of deceased PW-3 Ashfaq Ahmed Irshadali.

7. In the result therefore, Criminal Application is dismissed. Impugned order dated 21.2.2014 in Misc.

Application No. 382 of 2013 in Sessions Case No.42 of 2011 is set aside and the matter is remitted back to the Additional Sessions Judge, Greater Bombay for a decision afresh in accordance with law on the terms indicated above. The Record and Proceedings of Misc. Application No. 382 of 2013 be remitted back to the Additional Sessions Judge, Greater Bombay, forthwith.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)