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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 481 OF 2015
IN
CRIMINAL APPEAL NO. 618 OF 2012

Rashid Sahad Ali

.. Applicant

Vs.

State of Maharashtra

.. Respondent

Ms. Rebecca Gonsalvez for applicant.

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

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

APRIL 29, 2015.

P.C.

1. This application has been filed by the present applicant who has set up a plea that he was a juvenile in conflict with law. The said enquiry is pending before the learned trial court. At the out-set, Ms. Rebecca Gonsalvez, learned counsel for the applicant orally makes a request for grant of leave to amend the application for incorporating a prayer to the effect that the applicant be permitted to examine additional

witnesses if the applicant finds it necessary after the witnesses who have been examined so far are cross-examined on behalf of the applicant.

2. It appears that the learned trial court had held that the applicant was a juvenile in conflict with law. As the appeal was pending in this court, the applicant moved an application seeking his release as the trial court had recorded a finding that the applicant was a juvenile in conflict with law. During the hearing of the application, a grievance was made by the respondent-State of Maharashtra that opportunity of cross-examining the witnesses who had been examined by the court was not afforded to the respondent – State. This court, therefore, by its order dated 21/1/2015 in Criminal Application No. 337 of 2014 remitted the matter 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 names 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. We had, therefore, directed the Additional Sessions Judge, Greater Bombay to issue summons to the witness whose name would be disclosed by the respondent and after recording their

statements, permit the respondent to cross-examine him. We have further directed the Additional Sessions Judge, Greater Bombay to expeditiously complete the enquiry and submit the report to this court.

3. Present application has been filed by the applicant contending that after the close of the cross-examination on behalf of the State, certain aspects of the evidence of the witnesses, who have been examined by the court needs to be probed further by the applicant and, therefore, the applicant seeks the liberty of cross-examining the witnesses, who have been examined so far. Since this is an enquiry for determining if the applicant was juvenile in conflict with law, the applicant has also prayed that the applicant may be permitted to examine additional witnesses if the applicant finds it necessary in order to establish the plea of the applicant that the applicant was a juvenile in conflict with law.

4. It appears to us that the applicant has not made any application before the trial court for recalling of the witnesses or to afford an opportunity to the applicant to cross-examine the witnesses. It also appears that the applicant has not filed any application for grant of permission for examining additional witnesses.

5. We, therefore, grant liberty to the applicant for submitting an appropriate application before the trial court. The learned Counsel for the applicant has urged that since this is an enquiry, the applicant would certainly have a right of cross-examining the witnesses as well as both the parties would have a right of examining additional witnesses if they feel it necessary. The trial court shall decide the said application, if filed by the applicant, in accordance with law uninfluenced by any observations which have been made by us.

6. Application is allowed as indicated above, with no order as to costs. The trial court, after decision of the application, if filed by the applicant, shall endeavour to expeditiously conclude the said enquiry.

7. All concerned to act on an authenticated copy of this order.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)