

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

CRIMINAL APPLICATION NO. 649 OF 2015

Savitri @ Sumitra Siddappa Gowda ... Applicant.

V/s.

The Inspector of Police,
D.B.Marg Police Station & Anr. ... Respondents.

Mr. Chandrashekhar S. Patil i/by Ravi Kotian, Advocate for the
Applicant.

Mr. Rajesh More, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 17th JULY, 2015

P.C. :

1 Admit. Heard finally.

2 Heard the Advocate appearing for the Applicant
and the learned additional public prosecutor for the State.

3 The applicant is aggrieved by the order passed by
the Metropolitan Magistrate, Special Court for ITPA, 54th Court
at Mazgaon, Mumbai, rejecting the application for recall of the
witness i.e. PW-4.

4 The applicant is facing trial for the offences
punishable under the provisions of Prevention of Immoral

Traffic Act. The witness could not be examined as the lawyer of the applicant was not present when the witness was available for the cross-examination. Though there appears to be little negligence on the part of the applicant, the court shall bear in mind that the litigant cannot be made to suffer because of the preoccupation or negligence, as the case may be, on the part of the Advocate. A fair trial is a fundamental right of the accused. The trial court was supposed to take all necessary steps to see that the applicant gets a fair trial. This was ignored by the trial court.

5 Hence, I set aside the order passed by the learned Magistrate below Exh. 50. It is directed that the applicant shall be given liberty to cross-examine PW-4.

6 The criminal application stands disposed of in the above terms.

(JUDGE)

.....