

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

CRIMINAL APPLICATION NO. 830 OF 2015

M/s. Indospin Filati Ltd. & Ors. .. Applicants

v/s.

Rajendra Govindji Khona & Anr. ..Respondents

Mr. Mukesh Modi for the applicants

Mr. Sujeet Kurup i/b Satyaram Gaud for the respondent no.1

Mr. J.H. Ramugade, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 31st AUGUST, 2015.**

PC.

1. By this application, filed under Section 482 of the Cr.P.C. the applicants herein have challenged the order dated 10.8.2013 whereby the learned J.M.F.C. Kurla, Mumbai dismissed the application for recall of witness, filed under Section 311 of the Cr.P.C.

2. Mr. Modi, learned Counsel for the applicants has submitted that though the witness i.e. PW-1 was cross-examined, some of the questions could not be asked due to inadvertence and

oversight. The applicants, therefore, had filed an application for recall of the witness. He has further submitted that the applicants were not in any manner trying to fill up the lacuna. He has submitted that the learned Magistrate has erred in dismissing the application on the ground that the applicants had not specified the questions, which they intended to put to the witness.

3. The learned Counsel for the respondent has submitted that PW-1 was cross-examined extensively and the application was filed by the applicants only for delaying the proceedings.

4. The records reveals that the applicants herein are facing prosecution under Section 138 of the Negotiable Instrument Act in C.C. No.1062/SS/2012. The plea of the applicants was recorded and the complainant – respondent no.1 had filed the affidavit in evidence in the month of March, 2013. The complainant was extensively cross-examined on 26th August, 2013, 3rd March, 2014, 11th March, 2014 and 24th March, 2014. The statement of the accused under Section 313 of the Cr.P.C. was recorded and the

applicants accused had also examined two witnesses in defence. At this stage, the applicants filed an application for recall of PW-1 on the ground that few questions have remained to be asked to PW-1 due to inadvertence and oversight.

5. Undoubtedly, Section 311 of the Cr.P.C. empowers the Court to summon a material witness or to examine a person present at any stage, provided such evidence is essential to just decision of the case. In the instant case, as stated earlier, the applicants have cross-examined the complainant (PW-1) extensively. The applicants had not given any indication as to the nature of the evidence which was sought to be elucidated by recalling the witness. In other words, the applicants have not been able to satisfy that the evidence which is sought to be elucidated is germane to the issue involved and is necessary for the just decision of the case.

6. Under the circumstances, in my considered view, the conclusion arrived at by the learned trial Judge is appropriate and

just. The impugned order does not warrant any interference.

7. Hence, the Criminal Application is dismissed.

(ANUJA PRABHUDESSAI, J.)