

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

CRIMINAL APPLICATION NO. 837 OF 2015

Artiskinky Motion Pictures Pvt. Ltd. & Ors. .. Applicants

v/s.

State of Maharashtra & Anr. ..Respondents

Mr. Vincent X. D'silva for the applicants

Mr. Jehangir Khajotia i/b Abdul K. Millwala for respondent no.2

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

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 28th AUGUST, 2015.**

PC.

1. Heard learned Counsels for the respective parties and learned APP for the State.

2. Rule. By consent, Rule made returnable forthwith.

3. The applicant herein has challenged the order dated 11.08.2015 whereby the learned Magistrate has dismissed the application filed under Section 311 of the Cr.P.C.

4. By order dated 19.03.2015 in Criminal Application No.135 of 2015, this Court had permitted the applicant-accused to cross-examine the respondent complainant. Accordingly, the applicant accused had cross-examined the respondent complainant and the additional statement under Section 313 of the Cr.P.C. came to be recorded. The applicant – accused had expressed his desire to examine defence witnesses. Accordingly, the matter was posted for defence evidence. The records reveal that instead of adducing evidence, the applicant-accused filed an application under Section 311 of the Cr.P.C., which was resisted by the respondent complainant and which finally came to be rejected mainly on the ground that the Court has expedited the trial. The learned Magistrate has further held that the accused had examined witnesses earlier and on merits he has no case.

5. Needless to state that the defence evidence could not have been shunned merely on the ground of direction to expedite the trial. It is also pertinent to note that the re-examination of the

respondent – complainant, the accused was questioned under Section 313 of the Cr.P.C. and thereafter called on for his defence evidence. The accused having expressed his desire to examine defence witness, the matter was posted for defence evidence. The accused was, therefore, entitled to adduce defence evidence without any application. It is seen that by application, which was stated to be under Section 311 of the Cr.P.C., the accused had sought leave to examine herself. Needless to state that such application ought to have been under Section 315 of the Cr.P.C. Nonetheless, mere quoting of wrong Section could not have been a ground for rejecting the application.

6. Mr. Khajotia, learned Counsel for the respondent no.2 submitted that the applicants have been delaying the proceeding on one ground or the other. He has brought to my notice the fact that the case was fixed for recording of evidence of the defence witness, way back in the year 2010. Learned Counsel for respondent no.2 has submitted that this Court has already made

observations about the conduct of the applicants in the order dated 19th March, 2015 in Criminal Application No.135 of 2015. He has further submitted that instead of examining the defence witness on 20th April, 2015, the applicants have chosen to file application under Section 311 of the Cr.P.C. and have thereby further delayed the proceedings. In my view, the conduct of the applicant in delaying the proceedings can be a good ground for saddling him with costs and not a ground to spurn his request for adducing evidence.

7. Under the circumstances and in view of the discussion supra, the application is allowed subject to applicant to pay cost of Rs.10,000/- to the respondent. Cost is condition precedence.

8. The impugned order dated 11.08.2015 is hereby set aside. The applicant is permitted to examine herself and to adduce defence evidence, whose names shall be furnished well in advance, preferably within two weeks from the date of the order.

9. The learned Magistrate to conclude the trial as expeditiously as possible and in any event, within two months from the date of furnishing the names of the witnesses.

10. The Criminal Application stands disposed of in the above terms.

(ANUJA PRABHUDESSAI, J.)