

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3514 OF 2015

Shri A. Ramalingam Ramesh. ... Petitioner.
Versus
The State of Maharashtra. ... Respondents.

Mr. Mohd. Saeed Asgar Moghul, advocate for Petitioner.

Mr. Arfan Sait, APP for State.

Mr. Anil M. Rane, PSI, Charkop Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 9, 2015

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein happens to be an accused in C.C. No. 2689/PW/2013 pending before the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai. The Petitioner is being tried for an offence punishable under Section 498A, 494 of the Indian Penal Code. The substantive evidence of the complainant was being recorded on 4th August, 2015. On that day, the advocate representing the accused was conducting the matters in the High Court. The learned Magistrate had insisted upon the accused to cross-examine the complainant. However, since the accused is not well-versed with the Indian Evidence Act, the Petitioner had denied to cross-examine the complainant. The learned Magistrate without giving any further liberty to the accused recorded “no cross-examination” and that was only because the accused had refused to cross-examine the complainant.

4 There is no material to indicate that the accused had made any attempt to protract the proceedings or had indulged into dilatory tactics. It was the first date on the conclusion of the examination-in-

chief when the order of “no cross-examination” was passed. However, the accused deserves an opportunity to cross-examine the witnesses in order to shatter the testimony on oath. The trial has to be a fair trial. The accused cannot be denied of an opportunity to cross-examine.

5 Section 3 of the Indian Evidence Act defines an evidence as all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral statement. In fact, evidence includes examination-in-chief as well as cross-examination.

6 Juristic conception of term evidence in the case of oral testimony of the witnesses is that the party against whom it is used has had right and opportunity of cross-examining the witnesses. So long as the accused is not given, the right and opportunity of cross-examining the witnesses, any statement made by them can only be

described as a statement but cannot be dignified with the name of evidence.

7 In view of this, the Petition needs to be allowed and the Petitioner deserves an opportunity to cross-examine the complainant.

8 The learned Counsel appearing for the Petitioner upon instructions submits that the Petitioner would remain present before the Court on the next scheduled date.

9 Hence, the following order is passed.

ORDER

(i) The Writ Petition is allowed.

(ii) The order of “no cross-examination” dated 4/8/2015 passed by the learned Metropolitan Magistrate, 24th Court, Borivali, Mumbai is hereby quashed and set aside.

(iii) The learned Magistrate shall allow the accused/Petitioner to cross-examine the complainant on the next scheduled date.

10 Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment/order.**