

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 1014 OF 2015

Harmeetsingh Manmohansingh Vadhera and othersApplicants

V/s.

The State of MaharashtraRespondent

Ms. C. S. Gangane i/b Ms. Ratna R. Jaiswal for Applicants
Mr. D. R. More APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 1, 2015.

PC :

Heard respective parties.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Applicant herein is accused in Sessions Case No. 609 of 2014. Applicant is being tried for offence punishable under section 498 (A), 376 (a), 377, 323, 427, 406, 504, 506 r/w 34 of Indian Penal Code. It is the case of the applicant that applicant nos. 1 & 3 have been enlarged on bail, however, applicant no. 2 could not be enlarged on bail despite there being a bail order, only because of the negligence of his previous Advocate.
- 4) After commencement of the trial, complainant i.e. wife of the applicant

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no. 1 was being cross-examined. Previous Advocate representing the accused had partly cross-examined the witness. Subsequently accused had noticed the malpractices of the previous Advocate and had therefore, changed the Advocate on 22/08/2015. Subsequent Advocate had filed Vakalatnama on 22/08/2015.

5) Learned counsel for the applicants submits that previous Advocate representing accused had not handed over all the papers to enable the subsequent Advocate to cross-examine the witness. On 09/09/2015, Advocate for the accused i.e. applicant no. 1 was not present as she was busy in another court and moreover, she did not have whole set of papers of investigation to enable her to cross-examine the complainant. Applicant no. 1 was present before the Court and had requested the Court to grant a short adjournment on the ground of the inability of the Advocate to remain present on that day. Learned Sessions Court had directed the applicant to cross-examine the witness. Applicant/accused is facing serious charges and had no knowledge of the manner of the cross-examination as contemplated under Indian Evidence Act and therefore, applicant had not cross-examined the first informant. Learned Sessions Court has discharged the witness and has denied any cross-

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examination to the applicants.

6) Applicants herein are facing serious charges. In the interest of justice, applicants have every right to defend themselves to the best of their capacity and by taking recourse to the best of legal advice possible. It cannot be said that applicants are at fault. That they were misled by previous Advocate and therefore, in the interest of justice, right to cross-examine cannot be denied to them. In view of this, application deserves to be allowed.

7) Learned counsel for the applicants submits that the next scheduled date is 03/10/2015 and on that day Advocate for the applicants would cross-examine the complainant i.e. P. W. 1. In view of this, following order is passed.

ORDER

- (i) Application is allowed in terms of prayer clause (a).
- (ii) Order dated 09/09/2015 passed by Sessions Court is hereby quashed and set aside.
- (iii) Learned Sessions Judge shall give a fair opportunity to the Advocate of accused to cross-examine the witness and on any date thereafter.

- (iv) Applicants shall not take undue advantage of this order and seek adjournments on unwarranted grounds.
- (v) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

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