

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL APPLICATION NO. 1045 OF 2015**

|                                 |     |             |
|---------------------------------|-----|-------------|
| Shri Kisan Anna Dhage           | ... | Applicant.  |
| vs.                             |     |             |
| The State of Maharashtra & Ors. | ... | Respondents |

Mr. Aniket U. Nikam, a/w Mr. Ashish Satpute, Advocate for the applicant  
Mr. Arfan Sait, APP, for the State.

**CORAM: SMT.SADHANA S.JADHAV,J.**  
**DATE : 16th October, 2015.**

**P.C.**

Heard. Rule. Rule returnable forthwith with consent of the parties.

2. The applicant herein happens to be the original complainant in R.C.C. No.117 of 2010 pending before the Judicial Magistrate, First Class, Wai, Dist. Satara. The applicant herein had filed an application before the learned Magistrate seeking recall of two panch witnesses who were the panchas for the seizure of clothes. The said application was filed by the complainant in his personal capacity. The learned Magistrate had observed that the application was not filed through the prosecution and therefore had

directed the informant to request the APP to file an application.

3. On 7.4.2015, the learned prosecutor conducting the said matter, had filed an application seeking the relief of recalling the witnesses by issuing the bailable warrants against them. It was mentioned in the application that the witnesses Narayan Dhage and Dattatray Dhage and A.G.Dhaigude be recalled. All that was mentioned is that witness Nos. 1 and 2 are the panchas for the seizure of clothes. The learned Magistrate by an order dated 7.4.2015 i.e. on the same day had rejected the application. The learned Magistrate had rightly observed that the said applications were filed only after the statement of the accused was recorded under Section 313 of Cr.P.C. The arguments were also filed by the informant through a private Advocate and thereafter the present applications were filed. The trial is in progress since 2013. No fault can be found with the order passed by the learned Magistrate.

4. The learned counsel for the applicant submits that initially, the complainant had filed an application under Section 311 of Cr.P.C. in March 2013 for recalling Narayan Dhage and Dattarraya Dhage. At that time, they were being recalled to prove the panchnamas in respect of seizure of the vehicles of the accused and the clothes of the complainant.

5. It is pertinent to note that by an order dated 29.6.2013, the application filed by the complainant seeking recall was allowed. It was presented by the APP.

6. The learned counsel for the applicant, upon instructions, submits that although the application was allowed, the witnesses did not remain present and therefore, they could not be examined and hence the panchnamas in respect of seizure of the vehicles of the accused and seizure of clothes of the complainant could not be proved. However, there is nothing on record to indicate that they had not appeared. The prosecution as well as the complainant had proceeded thereafter till the stage of filing of the written arguments without bringing it to the notice of the magistrate. That the order dated 29.6.2013 has not been complied. The application which was filed on 7.4.2015 also does not indicate that the written arguments were filed prior to 29.6.2013. That for last two years, no application was filed to demonstrate before the Court that despite the application under Section 311 of Cr.P.C. being allowed, the witnesses have not appeared. The learned counsel for the applicant, upon instructions, submits that although the informant has filed written arguments, the case is

posted for oral arguments. No fault can be found with the order passed by the learned Magistrate as the trial has been pending for last five years.

7. In view of this, the learned counsel for the applicant seeks liberty to withdraw the application. Liberty as prayed for is granted in the interest of justice. The 'prosecution' is at liberty to file an application before the learned Magistrate to demonstrate that the order dated 29.6.2013 has not been complied with in letter and spirit. The learned Magistrate may decide the application on its own merits without being influenced either by the withdrawal of this application or by the observations made hereinabove.

Application is disposed of. Rule is discharged.

**(SMT.SADHANA S.JADHAV, J.)**