

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 5089 OF 2014

Dharmesh Surendra Soneta .. Petitioner

Versus

Amir Gulamali Morani & Anr. .. Respondents

Mr. Ashwini R. Rana i/b K. K. Rana , Advocate for the petitioner
Mrs. G. P. Mulekar, APP for the respondent-State.

CORAM:-M.L. TAHALIYANI, J.
DATED : -17/02/2015

P.C.

Heard the learned counsel for the applicant and
learned APP for the respondent-State.

2 The present criminal writ petition impugns the
order passed by the learned Magistrate in Criminal Case No.
71737/SS/2010, rejecting the application of the petitioner
(accused) for recall of PW No. 1 u/s. 311 of Cr. P.C. It appears
that the petitioner has filed true copies of evidence in Case
Nos. 375/SS/2010 and 2677/SS/2009, where certain admissions

are alleged to be made by respondent No. 1. The petitioner wanted to prove those admissions and, therefore, he wanted to recall the witness. In this regard, one may note the definition of public documents, which runs as under:

“S.74. Public documents – The following documents are public documents:-

- (1) Documents forming the acts, or records of the acts-
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;
- (2) Public records kept [in any State] of private documents.”

Section 77 says that certified copies of public documents can be produced in proof of the contents of the public documents or part/parts of the public documents.

3 In view of the definition of public documents and the manner in which they are required to be proved, it was not necessary for the petitioner to recall PW No. 1 to prove the contents of his evidence in other cases. The learned counsel has submitted

that there is evidence of petitioner on oath that the deposition produced by him belong to respondent No. 1 in some other case. In my opinion, this evidence of the petitioner on oath, if not challenged, will serve the purpose of the petitioner to prove the contents of the documents. It is not the case of the petitioner that respondent No. 1 has denied to have given evidence in the above stated two cases.

4 In my opinion, it was not necessary for the petitioner to make an application u/s 311 of Cr. P.C. The petition is, therefore, dismissed.

(JUDGE)

md.saleem