

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 935 OF 2016

Arjun s/o Bajirao Koli,
Age: 58 years, Occ: Labour,
R/o. Mondhala, Tq. Bhusawal,
Dist. Jalgaon.

...Applicant

versus

1. Shri. Vinod s/o Devidas Koli,
Age: 35 years, Occ: Labour,
R/o. Post Bahmalwadi, Tq. Raver,
Dist. Jalgaon.

2. Sanjay Pundalik Patil,
Age: 40 years, Occ: Labour,
R/o. Malsangve, Tq. Muktainagar,
Dist. Jalgaon.

3. The State of Maharashtra.

...Respondents

.....
Mr. K.B. Jadhav, Advocate h/f Mr. Sachin S. Bhise, Advocate for
applicant

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CORAM : N.W. SAMBRE, J.

DATE : 3rd MAY, 2016

ORAL ORDER :

In Criminal complaint case in relation to cheating in the matter of sale and purchase of tractor initiated by the present petitioner being Regular Criminal Case No. 274 of 2005, an application (Exhibit-78) under Section 311 of the Code of Criminal Procedure for setting aside the order of closure of evidence and for issuance of witness summons, came to be rejected on 20/03/2015 by

learned Magistrate.

2. Thereafter, another application (Exhibit-85) came to be moved for the same reasons. The said application came to be rejected on 30/09/2015.

3. Thereafter, the petitioner-complainant preferred Criminal Revision Application No. 59 of 2015, which was dismissed by learned Additional Sessions Judge, Bhusawal on 19/11/2015. As such, present criminal application.

4. Mr. K.B. Jadav, learned Counsel holding for Mr. Sachin S. Bhise, learned Counsel for the applicant would urge that looking to the discretion vested pursuant to the Section 311 of the Code of Criminal Procedure and eventuality that such powers of recalling of witness could be exercised at any such stage of the proceedings. The application for recalling of witness moved pursuant to Exhibit-85 ought to have been granted by learned Magistrate. He would then submit that principle of fair trial contemplates reasonable opportunity of hearing to the petitioner, who is the complainant and as such, the order impugned is not sustainable.

5. I have perused the record as is placed before this Court.

The proceedings were initiated sometime in 2005. Thereafter, witness summons were issued to the respondents and in 2012 the evidence came to be recorded. On 05/12/2013 the evidence of prosecution was closed.

6. The complainant thereafter changed his Advocate, which has prompted him to move the application (Exhibit-85) praying therein the issuance of witness summons to two witnesses. No cause is cited for invoking provisions of Section 311 of the Code of Criminal Procedure for the second time, as initially the application (Exhibit-78) for the similar reason was rejected by an order dated 20/03/2015.

7. The application (Exhibit-85) came to be rejected by learned Magistrate by observing that the applicant is trying to seek review of the earlier order dated 20/03/2015 passed below Exhibit-78. The other observations are that the matter is pending since long and the applicant is not serious in pursuing the matter.

8. The revisional Court, while dealing with the revision, has noted that after evidence was recorded in 2012 as witnesses were not coming forward, after recording evidence of the Investigating Officer, the evidence was closed on 05/12/2013.

9. It is then noted that once earlier application (Exhibit-78) was rejected which was also under Section 311 of the Code of Criminal Procedure, subsequent application seeking either modification or fresh relief for same cause was held not required to be considered and granted.

10. In my opinion, the view as is expressed by learned Magistrate, which is confirmed in the revision, in the light of scheme of Section 311 of the Code of Criminal Procedure does not call for any interference, particularly in the present proceedings when the complainant was not diligent in pursuing the matter as is apparent from the fact that present proceedings of complaint case is pending since last 11 years and the same has reached at the stage of final arguments.

11. While invoking the provisions of Section 311 of the Code of Criminal Procedure, no justifiable reasons are brought to the notice of this Court.

12. As such, criminal application fails and stands rejected.

[N.W. SAMBRE, J.]