

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

CRIMINAL APPLICATION NO. 3876 OF 2016

PINTYA @ ASHOK S/O DNYANDEO CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr Tambe Rahul A.
APP for Respondents: Mr N T Bhagat

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CORAM : V.K. JADHAV, J.

Dated: July 26, 2016

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PER COURT :-

1. With the consent of the learned counsel for respective parties, heard finally at the admission stage.

2. The applicant is original accused in Sessions Case No.29/2014 being tried for the offences punishable under section 395, 397 of Indian Penal Code r/w section 4 (25) of the Arms Act. Trial of the case was already commenced and prosecution has examined in all five witnesses to substantiate the charges levelled against the applicant/accused. Those prosecution witnesses were subjected to cross examination at length by the counsel engaged by the applicant/original accused. However, the applicant/accused has filed an application Exh.53 for recalling of those witnesses on the ground

that many questions are remained to be asked to those witnesses during the cross examination. Said application was strongly opposed by the prosecution. It has brought to the notice of the Trial Court that charge was framed in the case on 15.12.2015 and from 20.2.2016 evidence is recorded by the Court. Witnesses were subjected to cross examination by the counsel and for no reason the applicant/accused has filed an application Exh.53 for recalling of the said witnesses. The learned Judge of the trial court, by its impugned order dated 4.7.2016 below Exh.53 has rejected said application. Hence, this Criminal application.

3. Learned counsel for the applicant submits that, even though prosecution witnesses were subjected to cross examination by the counsel on record, subsequently, the applicant/accused has changed his counsel. However, said counsel has noticed that certain vital questions were not asked to the said witnesses. Learned counsel submits that, the applicant/accused is facing trial for grave offences like section 395, 397 of the Indian Penal Code and he must be given an opportunity

to cross examine the witnesses in all respect.

4. Learned APP submits that, the application Exh.53 is as vague as it could be. There is nothing in the application to point out that as to what questions remained to be asked to the witnesses and why those witnesses are necessary to be recalled. Learned APP submits that, change of the counsel cannot be a ground to recall the witnesses already examined by the prosecution. Learned APP submits that, this was nothing but an attempt to fill up lacuna and considering the same, the learned Judge has rightly rejected the application Exh.53.

5. It appears from the impugned order that case is more than five years old. Prosecution has examined in all five witnesses and applicant/accused was represented by the counsel of his choice. All witnesses were subjected to cross examination at length. On careful perusal of the application Exh.53, it appears that it has only stated in the application that certain important questions are required to be put to those

witnesses, however, it has not mentioned in the application Exh.53 that as to what those questions could be and what was the reason that the counsel representing the applicant/accused has not put those questions to the witnesses. Consequently, the learned Judge of the Trial Court has rightly observed that mere change of the counsel cannot be a ground to recall the witnesses. On perusal of the evidence of those witnesses, it appears that those witnesses were subjected to cross examination at length and even omissions are also put to those witnesses. The learned counsel representing the applicant/accused is also not able to demonstrate as to what important questions are required to be asked to those witnesses.

6. In view of this, I do not find any fault in the impugned order. There is no substance in the Criminal Application. Hence, following order is passed.

O R D E R

Criminal Application is hereby rejected.

(V.K. JADHAV, J.)

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