

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 117 OF 2016

SNEHAL DIAS, PRESENTLY IN SUB JAIL
SADA, VASCO.

... Petitioner

Versus

STATE THR. P.P.,

... Respondent

Mr. S. Shet, Advocate for the petitioner.

Mr S. R. Rivankar, Public Prosecutor for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 10th August, 2016

P.C.

Heard the learned Counsel for the petitioner and the learned Public Prosecutor for the respondent.

2. By the impugned order dated 19/05/2016, the learned Sessions Judge has recalled the Investigating Officer and PW26 for the purpose of ascertaining 'as to why the locks were changed' and PW2 and PW10 for identifying to items, which are allegedly stolen.

3. It is contended by the learned Counsel for the petitioner that there was no request by the prosecutor for recall of any of the witnesses and the Court acted suo motu. It is submitted that by recall of said witnesses, the Court cannot permit the prosecution to fill in lacuna in the case. It is submitted that the Sessions Trial is at a fag

end and at that stage, the witnesses could not have been recalled as the same would cause prejudice.

4. The learned Public Prosecutor supports the impugned order. It is submitted that the Court has wide powers under Section 311 of Cr.P.C. to summon any witness or to recall a witness already examined, if evidence of such witness or recall is necessary for the just decision of the case.

5. I have considered the rival circumstances and the submissions made.

6. In the case of RAJENDRA PRASAD VS. NARCOTIC CELL; (1999)6 SCC 110, a distinction is drawn on what would amount to lacuna in the prosecution case and it has been held that it is inherent and latent defect in the prosecution story, which cannot be equated with an inadvertence. In the present case, PW2 and PW10 are recalled only for the purpose of identifying certain articles, which are alleged to have been stolen. The Investigating Officer and PW26 are recalled for the purpose of ascertaining 'as to why the locks were changed.' In the opinion of the learned Sessions Judge the recall is necessary.

7. Having gone through the impugned order, I do not find that the order suffers from any infirmity. It is trite that under Section 311 of

Cr.P.C., the Court can summon any witness or recall a witness already examined, if in the opinion of the Court, such examination/recall is necessary for the just decision of the case. It is needless to mention that the petitioner shall get an opportunity to cross-examine the witnesses after recall.

8. In that view of the matter, I decline to entertain the petition. Criminal Writ Petition is, accordingly, rejected.

C. V. BHADANG, J.

SMA