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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.303 OF 2016

Anil D. Mahalaskar		Petitioner
<i>Versus</i>		
State of Maharashtra		Respondent

Mr. Sandeep Dere, for the Petitioner.
Mrs. A. S. Pai, APP for respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24TH FEBRUARY 2016.

P.C. :

1. Heard learned counsel for the petitioner and learned APP for the State.
2. By this petition, the original accused is challenging the order dated 18.01.2016, passed by the Additional Chief Metropolitan Magistrate, Mumbai, allowing the respondent State's application filed under Section 311 of the Code of Criminal Procedure (for short called as, "Code"), for examination of second Investigating Officer.
3. Submission of learned counsel for the petitioner is that already recording of evidence in the said case is over. Even the recording

of statements of petitioner and other accused under Section 313 of the Code, has already been concluded on 18.12.2015. As per Roznama, even the argument of learned APP was heard on 14.1.2016 and the matter was then adjourned for argument of the petitioner accused to 18.01.2016. On that day, application was moved by the prosecution for recording of evidence of II nd Investigating Officer Shri. G.P. Patil. It is urged that by allowing such application, the trial Court has now re-opened the case and therefore, the impugned order of the trial Court is required to be quashed and set aside.

4. However, the perusal of the impugned order of the trial Court reflects that the prosecution intended to examine II nd Investigating Officer PI G.P. Patil and accordingly summons was also issued to him. As he did not remain present, bailable warrant was also issued. Despite that he did not remain present and therefore prosecution closed its case. But thereafter Police Inspector G.P. Patil appeared and filed application stating that on account of demise of his sister-in-law, he could not remain present as his family was in bereaved condition. In view thereof, the trial court thought it fit to allow the prosecution to examine him as witness though there was delay in doing so. The trial Court also found that the petitioner accused would certainly get an opportunity to cross examine him and thereafter even the additional statement under Section 313 of the Code as

required can be recorded. However, not allowing to be examined as witness would definitely cause prejudice to the prosecution especially when the evidence of Investigating Officer is more fruitful in that way for the accused and now his evidence was available. In view, thereof, the trial Court permitted the prosecution to examine him as witness.

5. Needless to state the provisions of Section 311 of the Code are meant to arrive at just decision of the case. The evidence of Investigating Officer is always essential for just decision of the case. From the mere fact that he could not be available at the earliest stage, his evidence cannot be shut out as it is essential not only for the prosecution but also for the defence to bring out some lacunas of prosecution case. Otherwise defence may get prejudice. Therefore, from the aspects of both prosecution and the defence, evidence of Investigating Officer is essential for just decision of the case and it is pointed out that already examination-in-chief of the said witness is recorded. In my considered opinion, no illegality can be found in the impugned order of the trial Court. This writ petition holds no merits and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]