

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 184 OF 2016**

M/s. National Food Products (India) Pvt. Ltd.
& Ors.

...Applicants

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Benny Joseph with Mr. Aniruddha Lad i/b for the Applicants

Mr. V. V. Gangurde, A.P.P for the Respondent No.1-State

Mr. Javed Dhorajiwala I/b MZM for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 13th OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicants have impugned the order dated 1st December, 2015 passed by the Metropolitan Magistrate, 58th Court, Bandra, Mumbai, in case No. 1798/SS/2011, on an application filed by the applicant under Section 311 Cr.P.C, as well as the order dated 8th February, 2016 passed by the learned Sessions Judge in Criminal Revision Application No. 190 of 2016, rejecting the said application.

3. Learned Counsel for the applicants states that the applicants had not got sufficient opportunity to cross-examine the respondent No. 2 (original complainant). He submits that there are several documents which were exhibited, however, the applicants did not get sufficient opportunity to cross-examine the respondent No. 2, with respect to the said documents. He submitted that the cross-examination was conducted by a junior Advocate and therefore, the applicants cannot be made to suffer for the same. He submits that the applicants have a good case on merits and therefore in the interest of justice, the respondent No. 2 be recalled and the applicants be permitted to again cross-examine the respondent No. 2.

4. Learned Counsel for the respondent No. 2 (original complainant) vehemently opposed the application. He submitted that the applicants were given enough opportunity to cross-examine the respondent No. 2 (original complainant). He submitted that after the respondent No. 2 was cross-examined at length on three dates, the Advocate for the applicants cross-examined another witness in the said case. He submitted that only when the matter was posted for recording the statement of the

applicants under Section 313 Cr.P.C, that an application was filed by the applicants, only to delay the trial. He submitted that there is no substance in the application filed by the applicants and that both the lower Courts had rightly rejected the said prayer for recall of the respondent No. 2 under Section 311 Cr.P.C.

5. Perused the papers. It appears that the respondent No. 2 (original complainant) filed his affidavit of evidence on 16th December, 2011 and documents were exhibited on 2nd April, 2014. It appears that on 17th January, 2014, cross-examination of the respondent No. 2 commenced and the matter was adjourned for further cross-examination. On 2nd April, 2014, further cross-examination of the respondent No. 2 was conducted. Thereafter, the matter was again adjourned to 22nd January, 2015, when again the respondent No. 2 was cross-examined. The Advocate for the applicants closed their cross-examination on 5th February, 2015. Thereafter, the second witness was examined on the same day i.e. on 5th February, 2015 and cross was also conducted of the said witness on the very same day and thereafter, the matter was posted for recording the statement of the applicants (original accused) under Section 313 Cr.P.C. It appears that

sometime in April 2014, 'No Cross' order was passed by the learned trial Judge, which was also set-aside by the trial Court on 1st October, 2014, after which, the Advocate for the applicants cross-examined the respondent No. 2. The submission of the leaned Counsel for the applicants that the respondent No. 2 was examined by a junior Advocate, is also factually incorrect. A perusal of the cross-examination which was conducted shows that the cross-examination was conducted by a senior lawyer. It appears that the cross-examination of the respondent No. 2 commenced on 17th January, 2014, and that further cross-examination took place after almost 2½ months i.e. on 2nd April, 2014. Thereafter, again further cross-examination of the respondent No. 2 was conducted after more than 9 months i.e. on 22nd January, 2015 after setting-aside the 'No Cross' order dated 1st October, 2014. It is thus evident, that ample and adequate opportunity was granted to the applicants to cross-examine the respondent No.2. No grievance was made by the applicants even after the second witness was examined till the matter was posted for recording 313 statement of the applicants/accused. It also appears that all the documents, for which the applicants seek recall of respondent No. 2, were already on record. The applicants cannot be permitted to fill up the lacunae.

6. Perused the orders passed by the trial Court as well as the revisional Court. The said orders do not suffer from any infirmity and cannot be said to be perverse. No interference is thus warranted in the impugned orders.

7. Accordingly, the application is rejected.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.