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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.195 OF 2016

Gazanfar Murtuza Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Javed Hussein, for the Applicant

Mr.A.S.Shitole A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JUNE, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Learned APP waives service on behalf of Respondent - State.
3. By this application the applicant has impugned the Judgment and Order dated 21st January, 2016, passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Appeal No.127 of 2014, by which the learned Additional Sessions Judge was please to partly allow the said Appeal, inasmuch as, the order of conviction dated 21st January, 2014,

passed by the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai in C.C.No.66/PW/2003 was set aside and the matter was remitted back to the Trial Court with a direction to the Trial Court to invoke provisions of Chapter - VI of the Code of Criminal Procedure to secure presence of material witnesses and conduct retrial, in accordance with law, as expeditiously as possible and preferably within six months, from the date of receipt of record and proceedings.

4. Learned Counsel for the applicant submits that at no stage before the Sessions Court, the applicant had prayed for a retrial. He submitted that in the facts, there was absolutely no ground warranting retrial of C.C.No.66/PW/2003. He submitted that PW.1 was examined in the Trial Court and that PW.1 was cross-examined at length by the Advocate for the applicant. He further submitted that PW.2-the father of PW.1 had filed his affidavit of evidence, however, had not stepped into the witness box nor had offered himself for cross-examination, despite summons and bailable warrants being issued. He submitted that PW.2 is a lawyer and that despite summons and bailable warrant being issued, he had not appeared before the Trial Court in order to not make himself available

for cross-examination. He submitted that the Trial Court in that event had rightly proceeded with the matter. He submitted that summons and bailable warrants were also issued to secure the presence of all material witnesses, however, none appeared before the Trial Court. He submitted that the case is of 2002 and that more than 14 years had lapsed and hence, in the facts of the present case, the learned Judge had clearly erred in directing retrial of the case. Learned Counsel for the applicant has also tendered on record, a compilation of documents, including the Roznama of the Trial Court in the said case.

5. Learned APP does not dispute the fact, that several summons and bailable warrants were issued not only to PW.2 but even to other witnesses. According to him, the impugned order can be set aside and the learned Judge be directed to decide the appeal on its merits.

6. Perused the papers. It appears that the case is of 2002. The applicant is charged for the offence punishable under Section 498-A of the Indian Penal Code. I am also informed that in the interregnum, the applicant and PW.1 got divorced and that PW.1 remarried in 2004 and has

children. It also appears that summons and bailable warrants were issued to secure the presence of not only PW.2 but also of other witnesses. In these circumstances and having regard to the peculiar facts of this case, there was no justification to order retrial of the case.

7. Considering the peculiar facts of this case, the application is allowed and the impugned Judgment and Order dated 21st January, 2016, passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Appeal No.127 of 2014, is quashed and set aside. Criminal Appeal No.127 of 2014 is restored to its original file. The learned Judge shall now decide the Criminal Appeal on its own merits, in accordance with law, as expeditiously as possible and in any event within six months from the date of receipt of this order.

8 Rule is made absolute in above terms.

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

REVATI MOHITE DERE, J.