

Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 485 OF 2016

Shri Anil Ramchandra Tamboli.

..Applicant

Vs.

Shri Santkrupa Mahila Gramin Bigar Sheti
Sahakari Patsanstha & Anr.

..Respondents

Mr. Vaibhav Gaikwad, for Applicant.

Mr. Shailesh Chavan i/b Milind Deshmukh for Respondent No.1.

Ms. G.P. Mulekar, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 10th June 2016.

P.C.

1 Heard the learned Counsel for the respective parties.

2 By the present application filed under Section 482 of Cr. P.C., the applicant has impugned the Order dated 21.3.2016 passed below Exhibit 38 in S.C.C. No.50 of 2015, rejecting his application for recalling the complainant for its further cross-examination.

3 The applicant is accused in S.C.C.No.50 of 2015 instituted by the respondent No.1 under Section 138 of the Negotiable Instruments Act. The cross-examination of the complainant was conducted by the Advocate

for the applicant and on 29.8.2015 i.e. the date of filing of the application below Exhibit 38 the cross-examination was already over. The record further discloses that after the applicant realised the fact, that there are certain lacunas which crept in during the cross-examination which are not beneficial to the applicant, he filed an application below Exhibit 38 for recalling the said witness for conducting cross-examination on the ground that for “just decision” of the said case it is necessary. The respondent-complainant filed detailed say dated 5.9.2015 and opposed the said application. The learned Trial Court by its order dated 21.3.2016 has rejected the said application.

4 It is clear from the perusal of the entire record that the applicant, not only wants to delay the trial, but also wants to fill up lacune which have crept in during the course of cross-examination of the complainant by raising a specious plea that his earlier Advocate did not conduct cross-examination properly. If the applicant was so conscious about conduction of the cross-examination by his earlier Advocate in a particular and/or proper manner, he ought have instructed his Advocate in the Court itself before accepting the notes of evidence. After realizing the fact that in the cross-examination of the complainant no fruitful material has been extracted in favour of the applicant herein, the applicant now

cannot be permitted to raise the plea that for “just decision” of the case, the recalling of the complainant/witness is necessary. The learned Single Judge of this Court in the case of Geenu Rakesh Khurana Vs. Badjate and Company reported in 2008(1) Bom. C.R. (Cri.) 968, in paragraph-4, has taken similar view and I am fortified in making the aforesaid observations by placing reliance on the said Judgment.

5 I find that the impugned Order passed by the Trial Court does not suffer from any infirmity either in law or on facts. The application is devoid of any merits and is dismissed accordingly.

6 The Judicial Magistrate First Classs, Phaltan is directed to expedite the trial.

7 The application is dismissed in the aforesaid terms.

(A.S. GADKARI,J.)