

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 2331 OF 2016

Omnarayan @ Omnath Amarnath SharmaPetitioner
V/s.

The State of MaharashtraRespondent

Mr. Shivraj Patil Advocate for Petitioner.
Ms. V. S. Mhaispurkar APP for the State.

CORAM : RAVINDRA V. GHUGE, J.
DATED : JULY 11, 2016.

PC :

- 1) This matter is taken on production board after it was mentioned at 3.00 p.m. and a grave urgency was expressed by the Petitioner.
- 2) The Petitioner is aggrieved by the order dated 24/06/2016 by which Application Exhibit 27 filed by the Petitioner under section 311 of the Code of Criminal Procedure, 1973 has been rejected and his request to recall prosecution witness no. 1 (P.W. No. 1) has been rejected.
- 3) The learned Advocate for the Petitioner submits that P.W. 1 was cross-examined on 04/01/2016 on behalf of the Petitioner/accused. The cross-examination was deferred. The Petitioner thereafter, changed his Advocate in the said Sessions Case. After the new Advocate appeared for the Petitioner, he

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filed an application on 26/02/2016, praying for recalling of P.W. 1 for further cross-examination. The said application was kept pending and was not decided by the learned Sessions Judge. Finally, by the impugned order dated 24/06/2016, after P.W. 1 to P.W. 10 were examined, the application for recalling P.W. 1 has been rejected.

4) I have considered the submissions of the learned Advocate for the Petitioner who has strenuously criticized the impugned order.

5) It appears from the petition/paper-book and the Rozanama placed on record that P.W. No.1. was extensively cross-examined by the Advocate for the Petitioner. The cross-examination was deferred only on the request of the said Advocate on a categorical statement that he would like to think whether one or two questions could be put to P.W. 1 on the next day. Thereafter, the matter adjourned and the Petitioner did not proceed to cross-examine P.W. No. 1. It was in this backdrop that by an order dated 21/01/2016, the cross-examination of P.W. 1 was closed.

6) The new Advocate for the Petitioner filed his Vakalatnama on 18/02/2016. No application for recalling P.W. 1 was filed. The Petitioner thereafter, proceeded to cross-examine P.W. 2 on 18/02/2016 and P.W. 3 on

26/02/2016. It was then that the application for recalling P.W. 1 was filed on 26/02/2016.

7) The unusual submissions made by the Petitioner that the learned Sessions Court kept the application pending, is not only unacceptable, but it deserves to be deprecated. The record reveals that the Petitioner did not chose to seek recalling of P.W. No. 1 earlier. He proceeded to cross-examine the prosecution witnesses. Even if it is noted that he preferred an application on 26/02/2016 for recalling P.W. No. 1, it does not appear that he has sought urgent orders from the Court. He proceeded to cross-examine the prosecution witnesses till P.W. 10 was cross-examined, without a murmur.

8) After the rejection of the application by the impugned order, the Petitioner had moved the learned Sessions Judge for seeking stay to the trial and the same has also been rejected.

9) Notwithstanding the above, the application dated 26/02/2016 by which the Petitioner sought recalling of P.W. No.1, does not put forth any justification or specific reason for recalling P.W. No. 1. It has come on record that P.W. 1 was extensively cross-examined on behalf of the Petitioner.

10) In the light of the above, I do not think that the supervisory jurisdiction

of this Court under Article 227 of Constitution of India needs to be invoked in this matter. The impugned orders are neither perverse nor erroneous.

11) This petition is devoid of merits and is therefore dismissed.

(RAVINDRA V. GHUGE, J.)