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

CRIMINAL WRIT PETITION NO.2544 OF 2016

Rishi Rajiv Dhandia	...Petitioner
Versus	
1. The State of Maharashtra	
2. Jitendra Satyanarayan Singh	...Respondents

Ms.Swapna P.Kode, for the Petitioner.

Ms.P.P.Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
DATE : 29th AUGUST, 2016

P.C. :

1. Heard learned Counsel for the petitioner 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 petitioner, the petitioner seeks quashing of the impugned order dated 22nd April, 2016, passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Revision Application No.135

of 2016, as well as the order dated 29th October, 2015, passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai, in C.C.No.498/PS/2010, by which the petitioner's application seeking recall of the witness for cross examination was rejected.

4. Learned Counsel for the petitioner submits that the prosecution examined Jitendra Satyanarayan Singh, as PW.1 on 8th July, 2015. She submitted that as the Advocate for the petitioner (accused) as well as the petitioner (accused) were unavailable on the said date, Advocate Mr.Prashant V. Gavai, appeared in the matter on behalf of the Advocate for the applicant and filed an exemption application for the accused being Exhibit – 13 and an adjournment application being Exhibit – 14. Learned Counsel submitted that both the said applications were rejected by the Trial Court. She submitted that the learned Judge asked Advocate Mr.P.V.Gavai to proceed with the cross examination and when he refused to proceed with the said cross examination, it was observed that “cross is declined.” She further submitted that the petitioner thereafter, filed an application dated 4th September, 2015, seeking recall of the said witness and for permission to cross examine PW.1, however, the said application

was rejected by the learned Judge.

5. Perused the petition and the impugned orders. It appears that the petitioner – accused as well as his Advocate were absent on the date when PW.1 - Jitendra Satyanarayan Singh was examined. It also appears that an exemption application for the petitioner (accused), being Exhibit – 13 as well as an Adjournment Application, being Exhibit – 14 were filed by Advocate P.V.Gavai, however the said applications were rejected and the Advocate who filed the said applications was asked to proceed with the cross examination of PW.1. It is observed by the learned Judge, that the advocate had declined to cross examine the witness. Thereafter, an application seeking recall of the said witness - Jitendra Satyanarayan Singh was filed, however the same was also rejected. Although, the learned Judge, had observed that not a single ground was made out for recalling the witness, a perusal of the application for recall discloses the personal difficulty of the Advocate, due to which she could not remain present on that day. As far as the Revision Application filed by the petitioner, in the Sessions Court is concerned, the same was rejected on the ground of maintainability and not on merits.

6. Considering the peculiar facts of this case and in the interest of justice, the petition is allowed. The impugned order dated 22nd April, 2016, passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Revision Application No.135 of 2016, and the order dated 29th October, 2015, passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai, in C.C.No.498/PS/2010, are quashed and set aside. The learned Metropolitan Magistrate to summon PW.1, so as to enable the petitioner to cross examine PW.1 - Jitendra Satyanarayan Singh.

7. Learned Counsel for petitioner states that the petitioner as well as his Advocate will remain present on the next date and will proceed with the matter and will not seek any adjournment.

8. Rule is made absolute in above terms.

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

REVATI MOHITE DERE, J.