

Anand

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

**WRIT PETITION NO.3118 OF 2016**

1. Nausef Rehman Khan .Petitioners
2. Rabiullah Naseeullah Khan

Vs.

The State of Maharashtra .Respondent

Mr.K.M.Mhatre, Advocate, for the Petitioners  
Ms Pallavi Dabholkar, APP, for the Respondent –  
State

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 26.09.2016**

**P.C.**

. At the outset, learned counsel for the  
Petitioners seeks leave to the amend prayer  
clauses in the Petition.

2. At the outset, learned counsel for the  
Petitioners states that he does not press this  
Petition, as he does not intend to examine PW.12  
and PW.16. He submits that as far as re-call of  
PW.1 is concerned, he does not press for re-call  
of PW.1, at this stage, as the Petitioners had

not prayed for re-call of the said witness i.e. PW.1 in the original Application. Learned counsel however seeks liberty to file an appropriate Application seeking re-call of PW.1.

3. Perused the papers and the order dated 23.08.2016 passed by the learned Addl. Sessions Judge. By the said order, the learned Judge had re-called PW.18, the investigating officer - Shrikant Desai, under Section 311 of the Code of Criminal Procedure for the purpose of cross-examination. A perusal of the original Application, being Exh.148 shows that the Petitioners had sought re-call of PW.12, PW.16 & PW.18 and not PW.1. As far as re-call of PW.18 is concerned, learned Addl. Sessions Judge was pleased to partly allow the Application. As noted earlier, learned counsel for the Petitioners does not press the aforesaid Petition seeking re-call of PW.12 & PW.16, as he does not wish to examine them now. He, however,

seeks liberty to file an appropriate Application seeking re-call of PW.1. The original Application sought only re-call of PW.12, PW.16 & PW.18 (PW.18 was re-called). As the learned counsel for the Petitioners does not press for re-call of PW.12 & PW.16, the aforesaid Petition does not survive. The Petitioners are, however, at liberty to file an appropriate Application seeking re-call of PW.1. If such an Application is filed, the learned Sessions Judge to consider the same on its own merits, in accordance with law, uninfluenced by the withdrawal of this Petition.

4. Accordingly, the Petition stands disposed of.

Parties to act on the authenticated copy of this order.

**(REVATI MOHITE DERE, J.)**