

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4161 OF 2015**

Ms. Yashita Mukhi Petitioner

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Hemang Amar Jariwala i/by Auroma Law, Advocate for the
Petitioner.

Ms. P.B. Bhosale, APP for the State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 16th February, 2016

P.C.

1 This petition challenges the order dtd.16th September, 2015, by which the learned Metropolitan Magistrate dismissed the application of the petitioner under Section 311 Cr.PC. for recalling herself for re-examination.

2 The petitioner has filed proceedings against the respondent for the offence punishable under Section 138 Negotiable Instruments Act. After her entire evidence, including cross-examination was completed, she filed the application in

question for her own recall. The purpose for recall is stated at paragraphs 1 and 2 of the application. The petitioner claims that a sentence in her deposition recorded on 7th November, 2014 has been erroneously recorded as “It is true to say that, the accused has issued the cheque against the investment of my mother in 'Nainital Portfolio Management Services’”. It is the claim of the petitioner that she had in fact denied the suggestion by saying that “It is not true to say that, the accused has issued the cheque against the investment of my mother in 'Nainital Portfolio Management Services’”.

3 The trial court dismissed the application with an observation that the applicant is trying to wash away the admission given by her in the deposition. The learned Judge has further observed that witness cannot be recalled to fill the lacunae or to remove/wash away the admissions given by the witness. If it is the case of the petitioner that there was any typographical error in the evidence, it was necessary for her to bring it immediately to the notice of the court for the purpose of correction. There cannot be re-examination of the witness by resorting to Section 311 Cr.P.C. for any correction.

4 Mr. Jariwala, the learned advocate for the petitioner relying upon the decision of the Apex Court in Rajendra Prasad

vs. Narcotic Cell, reported in (1999) 6 Supreme Court Cases, page 110 submits that the Apex Court has in fact appreciated in the decision that humans are prone to make mistakes and are required to be given an opportunity to correct the mistake. In my opinion, the decision cited will not be applicable to the facts of the present case. The basis of the application is alleged error in recording of the deposition. Such errors are required to be corrected by immediately pointing the same out to the court. Hence the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)