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

CRIMINAL WRIT PETITION NO.3965 OF 2016

Haresh Ratilal Vaghadia

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr.A.P.Madhuri, for the Petitioner.

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

Ms.Smita Dandige, for the Respondent No.3.

CORAM : REVATI MOHITE DERE, J.

DATE : 21st NOVEMBER, 2016

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner seeks quashing and setting aside of the order dated 8th November, 2016 passed by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, below Exhibit – 28 in CC No.3282/SS/2012 and the order 8th November, 2016 passed by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, below Exhibit – 29 in CC No.2644/SS/2012.

3. Learned Counsel for the petitioner states that an opportunity be granted to the petitioner to conduct the cross-examination of the Respondent No.3 (original complainant). She submits that the petitioner's earlier lawyer had not conducted the cross examination properly and hence an opportunity be given to the petitioner, by recalling the Respondent No.3 (complainant) and by granting permission to the petitioner's Advocate to further cross examine the Respondent no.3. She submits that earlier efforts were also made to amicably resolve the matter. She submits that the petitioner will be put to tremendous hardships, if the petition is not allowed and the impugned orders are not quashed and set aside. She further submits that in the interest of justice, appropriate orders be passed.

4. Learned Counsel for the respondent no.3-original complainant opposes the petition. She submits that the petitioner is trying to delay the case by filing frivolous applications. She further submits that the matter is at the fag end and has been kept for pronouncement of Judgment today. She further submits that the said application was filed after the arguments had concluded and the matter was posted for Judgment. She submits that the petitioner's earlier lawyer had conducted the cross examination at

length and that the petitioner cannot now seek recall of the Respondent no.3 (complainant) on the ground that the earlier advocate had failed to conduct the cross examination properly. She submitted that respondent no.3 is aged 90 years and any further delay will infact seriously prejudice the respondent no.3. She submits that the matter was lingering for almost 1 year for compromise, however, no compromise was arrived at and that adjournments were sought in the said case, only on the ground, that the petitioner will be settling the case.

5. Perused the papers. At the outset, it may be noted that the application filed by the petitioner seeking recall of the Respondent no.3 (complainant) for cross examining him, is not on record. However, it appears from the impugned orders, that there is no specific and reasonable ground set out in the said application, for entertaining the said application filed under Section 311 the Code of Criminal Procedure. It is not in dispute that cross examination of Respondent no.3 was conducted in the said case, by the petitioner's lawyer, sometime in December, 2015. It also appears that after a new lawyer was appointed by the petitioner, the said new lawyer opined that the earlier lawyer had not conducted the cross

examination properly and hence an application was filed under Section 311, after the arguments in the said case had concluded and the matter was posted for Judgment. It is not in dispute that the matter is posted today for pronouncement of Judgment. The petitioner's earlier lawyer has cross-examined the Respondent no.3 (complainant). Merely because the petitioner's new lawyer opined that the earlier lawyer had not conducted the cross-examination properly, cannot be a ground to recall the said witness. This seems to be the only ground. It appears that the petitioner is trying to delay the trial by filing the application seeking recall of the Respondent no.3 (complainant), under Section 311 of Cr.PC, only after the arguments had concluded and the matter was posted for Judgment. There is no infirmity in the impugned orders.

6. Considering the aforesaid, there is no merit in the petition. The petition is accordingly dismissed and disposed of as such.

REVATI MOHITE DERE, J.