

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4758 OF 2017**

Kamal Sunderdas Bathija	..Petitioner
Versus	
The State of Maharashtra	..Respondent

Mr. Subhash Jha i/b. Law Global Advocates for the petitioner.
Mr. K. V. Saste, APP for the State.
Mr. Sudeep Pasbola i/b. Mr. Rahul Arote, advocate for the intervenor in criminal application No. 500 of 2017.

**CORAM : RANJIT MORE &
SMT. SADHANA JADHAV, JJ.**

DATE : 17th NOVEMBER, 2017.

P. C. :

Heard learned counsel and learned APP for the respective parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 14th November, 2017, passed by the learned Additional Session Judge at Kalyan rejecting the petitioner's application at Exhibit 764 in S.C. No.219 of 1999. The said application was preferred by the prosecution under Section 311 of the Code of Criminal Procedure, 1973 (for short "the Cr.PC.") for calling 9 witnesses named in the application for giving their evidence in the case.

3. The record reveals that the incident in question occurred in

the year 1990 and the charge-sheet in respect of the crime was filed in the year 1999. The charge against the accused is framed in the year 2008. The record further shows that in all 16 witnesses have been examined in this case between the period 2009 and 2016 and, thereafter, on 17th June, 2017, statements of the accused under Section 313 of the Cr.PC was also recorded. Not only this, even the oral arguments of both the sides were heard by the learned trial Judge and written notes of arguments were also submitted. The prosecution filed closure purshis at "Exhibit 705" on 4th October, 2016. Thereafter present application was filed under Section 311 of the Cr.PC by prosecution and similar application was also filed by the petitioner/original complainant. The Trial Court rejected the aforesaid application filed by the prosecution on the ground that there are no reasons for the purpose for which the witnesses should be called and how they would be helpful and important for just decision of the subject sessions case.

3 We have perused the applications filed by the prosecution as well as the petitioner and we also find that there no reasons are given therein for the purpose of calling of the witnesses. It is settled position in law that the provisions under Section 311 of the Cr.PC can be resorted only with the object of finding out the truth or obtaining proper proof of such facts, which will lead to a just and correct decision of the case. In the absence of any foundation in the application to justify calling of the

witnesses, in our considered view, the Trial Court has approached the matter from the correct point of view, especially in the circumstances that the sessions case is fixed for judgment on 18th November, 2017 ie. tomorrow.

4. Mr. Jha, learned counsel for the petitioner, relied upon decisions of the Apex Court in **Rajendra Prasad versus Narcotic Cell (1999) 6 SCC 110 and Zahira Habibulla H. Sheikh and anr. (2004) 4 SCC 158.**

In **Rajendra Prasad (supra)**, the Apex Court held that the powers under Section 311 of the Cr.PC. can be exercised at any stage. There is no dispute about this proposition. However, this decision is not applicable to the facts of the present case inasmuch as the ground on which the prosecution's application is rejected is that there are no reasons in the application in support of the prayers made therein.

So far as the decision of the Apex Court in **Zahira Habibulla H. Sheikh and anr.(supra)** is concerned, the Apex Court described the role of the Criminal Courts in administration of justice. There is no dispute about the proposition laid down by the Apex Court in this judgment. However, in the present case, the Trial Court found that there is no justification pointed out by the prosecution for exercising the power under Section 311 of the Cr.PC.

5. Be that as it may, out of the 9 witnesses which the prosecution and the petitioner wanted to examine, first 5 persons were examined earlier in connected case i.e. sessions case No.2189 of 199 and these witnesses turned hostile. Out of these 5 witnesses, only first two persons have been cited as witnesses in the charge-sheet. So far as persons at serial Nos. 6, 7, 8 and 9 are concerned they are police personnel. Along with these police personnel, 2 persons were also there at the time of incident and they have already been examined in the present case. The statements of persons at serial Nos. 6, 7, 8 and 9 are similar to those two police personnel who have already been examined in the sessions case.

6. Taking the totality of the facts and circumstances of the case, we are of the opinion that the application is an afterthought and made with the intention to protract the trial and, therefore, we are not inclined to entertain the petition. The petition is, accordingly, dismissed.

7 In view of the disposal of the petition, the criminal application No.500 of 2017 will not survive for consideration and the same is also disposed of as such.

[SMT. SADHANA JADHAV, J.]

[RANJIT MORE, J.]