

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

WRIT PETITION NO. 548 OF 2017

Abhimanu Baben Thikhe

... Petitioner

vs.

Arun Sampatrao Patil & anr.

... Respondents

Mr. B. A. Lawate, Advocate for the petitioner.

Ms. Pallavi Dabholkar, A.P.P. for the State.

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

Date : 6th March, 2017

P.C. :

1. This petition is directed against the order dated 6th January, 2017 by which the trial Court dismissed the petitioners application at Ex.49 filed under Section 311 Criminal Procedure Code ('Cr.P.C.' for short). The witnesses proposed to be examined by the petitioner, are the Deputy Registrar, Haveli and Gram Sevak of Grampanchayat, Aglambe, Tal. Haveli, Dist. Pune.

2. The short question arising for consideration in this petition is whether the petitioner should be permitted to examine additional witnesses after the entire trial in the criminal case is over and the matter is ready for arguments. Admittedly, the two proposed witnesses had been included

in the list of witnesses filed at the time of filing of the complaint. The petitioner chose not to examine them during trial. The petitioner's application at Ex.49 offers no explanation for failure to examine the witnesses nor to the delay in filing the application. The fact that the petitioner did not examine them at the relevant time would mean that the two witnesses either would not have supported the petitioner or in the alternate it would mean that the two witnesses were not material witnesses.

3. Respondent no.2 had obviously opposed the application. The Trial Court dismissed the application on two grounds. Firstly that the application was being filed by way of filling up the lacuna in the evidence. Secondly the evidence which was proposed to be produced before the Court was secondary evidence and it could not have been tendered in evidence without bringing on record the necessary supporting evidence in compliance of Section 65 of the Evidence Act. The Trial Court also notes that proposed witness no.2 is wholly unnecessary since the fact of death of the father of the petitioner not being in dispute. Thus there is no infirmity whatsoever in the impugned order. Hence the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]