

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.177 OF 2017**

Mr. Rajeev Khandelwal Applicant

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Sunil D'Souza, Mrs. P.J. Kanani a/w Ms. V.H. Dongre, for the Applicant.

Ms. Anamika Malhotra, A.P.P. for respondent no.1- State.

Mr. H.H. Nagi a/w Mr. S.R. Shinde i/by I.B. Singh, Advocate for Respondent no.2.

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

Date : 10th February, 2017

PC :-

1 The applicant is the accused no.3 in CC No.211/SS/1997 filed by respondent no.2 for the offence punishable under Section 138 Negotiable Instruments Act. He files the present application to challenge the order of the trial Court rejecting his application under Section 311 Code of Criminal Procedure for recall of a witness. The present application is opposed by respondent no.2.

2 Briefly stated factual background of the present

application is as follows:

. The evidence of first witness of respondent no.2 was completed on 18th February, 2014. Thereafter the evidence of his second witness i.e. P.W.-2 commenced. During the evidence of the second witness, certain documents i.e. Exhibit 184 to 196 and 208 to 210 were produced. On 18th November, 2014, the applicant filed first application, being Exhibit-155, for recall of the first witness. The trial Court rejected that application by its order dtd.17th March, 2015 with an observation that since the evidence of P.W.2 was in progress, the application for recall of P.W.1 was not maintainable at that stage. It further observed that if the applicant desired to cross-examine P.W. 1 on those documents, he may submit an application after cross-examination of P.W. 2 was complete. Thereafter on 13th January, 2017, the second application for recall at Exhibit 217 came to be filed. In that application, the applicant contended that after the evidence of P.W. 1 was complete, P.W.2 had filed several documents vide a separate list of documents, Exhibit 147 (from page 1 to 251). Apart from filing of those documents, P.W. 2 had also filed separately xerox of minutes of meeting of the various meetings of Board of Directors of respondent no.2. The applicant alleged that, the documents had deliberately not been produced through P.W.1., though copies of the documents were available when he was examined, so as to spare him of cross-examination on the documents. Also while producing the

documents through P.W.2, no explanation was offered by respondent no.2. The applicant, therefore prayed that it was absolutely essential to recall P.W. 1 “for his further cross-examination in the above case with reference to the new documents, which have been tendered in the evidence for the first time through the testimony of Mr. Rishi Ramesh Pilani”. Respondent no.2 filed his reply dtd. 10th January, 2017 to the application. The trial Court by the order impugned rejected the application.

3 Though the application at Exhibit 217 as filed was absolutely vague in respect of the documents allegedly filed through P.W.2, the trial court in it's detailed reasoned order has noted that the grievance of the applicant was to the documents at Exhibit 184 to 196 and 208 to 201. It lists the documents at para 6 of the impugned order and notes that the documents at serial no. (i) to (x) have been exhibited at serial nos.184 to 194 because they are certified copies of the court proceedings and the orders passed thereon. The applicant had also not objected to those documents. This is not disputed by Mr. D'souza, who appears for the applicant in the present application. The document objected to were, certified copy of annual report at Exhibit 195, certified copy of the balance-sheet (Exhibit 196) and the documents exhibited at serial nos. 208 to 210. It opined, that the documents being copies of the statement of account of respondent no.2 and the documents being proved

through P.W.2, there was no need to recall P.W.1 for his cross-examination. It noted that, all the aspects of the documents had been put to P.W. 2 and P.W. 3 in cross-examination and nothing had remained to be cross-examined as far as the documents are concerned. It is not expected that for the documents filed by one witness, it is necessary to recall all the witnesses, who had been earlier examined. Thus, there was no real reason for the application and that it was filed only because of the liberty given by the court in it's order dtd. 17th March, 2015 passed on Exhibit 155.

4 Mr. D'Souza, the learned advocate for the applicant submits vehemently that respondent no.2 had deliberately not produced the documents though available with it at the time when evidence of P.W. 1 was recorded. According to him, this move was made by respondent no.2 in order to spare P.W. 1 from the cross-examination. He argues that, since the first application for recall filed by the applicant had been rejected with liberty to file a fresh application after the evidence of P.W. 2 was complete, the trial Court ought to have allowed the second application.

5 Mr. Nagi, the learned advocate for respondent no.2 submits, per-contra, that the application was nothing but an attempt on the part of the applicant to delay the proceedings, which have been pending since the year 1997. He points out

that after the evidence of P.W. 1 was completed in the year 2010, the applicant had made an application for his recall for further cross-examination. That application had been allowed. The cross-examination on recall went on till the year 2014. He also submits that P.W. 2 has already been extensively cross-examined on the documents. Therefore, there is no need for recall of P.W.1.

6 Perusal of both the applications for recall i.e. applications at Exhibit-155 and Exhibit-217 shows that they are absolutely vague. Though by the time of filing of the application, the documents had already been tendered and marked in evidence, the applications merely referred to the documents as “new documents”. For a witness to be recalled for cross-examination of any document, firstly it was necessary for the applicant to specifically describe the documents on which the cross-examination was required. Secondly, it was also necessary for the applicant to set out the reason why cross-examination of the particular witness on those documents was required. In the absence of this basic pleading in the application, the trial Court would have been justified in rejecting the application outright. On this background, the effort of the trial court in it's order must be commended. It is patent from the record that, there is absolutely no basis made out for recall of the witness and hence no fault can be found with the impugned order. The application filed by the applicant

was clearly an attempt to further delay the proceedings. Hence, the application is dismissed.

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