

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 622 OF 2016

Air India First Colony Association and anotherPetitioners

Vs.

R. D. Khanorkar and another ... Respondents

Mr. Ashutosh Thipsay a/w Mr. Mishra i/b M. V. Kini
and Co. Advocate for Petitioner
Ms. Pavitra i/b Ms. Neelam Topkar for Respondent no. 1.
Ms. Anamika Malhotra APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 12th APRIL, 2017.

P.C.

- 1) Heard the learned counsel for the petitioner.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Being aggrieved by the order dated 30/10/2014, petitioner herein had filed Revision Application No. 483 of 2015 before Sessions Court. Revision Application was dismissed on 01/08/2015 holding that Revision Application was not maintainable. Being aggrieved by the same, petitioner has

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approached this Court. Petitioner herein had filed an application in C.C. No. 322 of 2006 contending therein that the complainant be recalled for cross-examination. It was urged before the learned Metropolitan Magistrate that on the scheduled date, the counsel representing the petitioner was not present before the Court. Since the learned Magistrate was not inclined to grant adjournment, petitioner had engaged the Advocate who was not conversant with the facts of the case and yet had proceeded with the cross-examination. According to the petitioner, for want of proper instructions, cross-examination was not complete and not relevant to the facts and therefore, in the interest of justice, it would be necessary to recall the complainant.

4) The learned Magistrate had rejected the said application on the ground that it was a summary case which was pending since 2006. It is pertinent to note that the learned Metropolitan Magistrate as well as Revisional Court have specifically observed that in the said application, petitioner had not stated satisfactory grounds for recalling the witness and hence, application was rejected by further observing that the counsel representing the accused had taken cross-examination at length.

5) It is pertinent to note that order dated 01/08/2015 was challenged before this Court by filing a writ petition in February 2016. No efforts were made to circulate the matter, however, it had appeared on board on 08/08/2016. The learned counsel representing the respondent was granted time to file Vakalatnama. This Court had specifically observed that pendency of this petition shall not be construed as a stay to the proceedings in C.C. No. 322 of 2006 and therefore, proceedings were continued before the learned Magistrate.

6) The learned counsel for the petitioner submits that at the time when the petition was filed also, examination of the accused under section 313 of Code of Criminal Procedure, 1973 was completed. It was in these circumstances that this Court was not inclined to stay the proceedings.

7) This Court cannot be oblivious of the fact that as on today, case is posted for final hearing and it would not be appropriate to set aside the order passed by the learned Magistrate. It is in these circumstances that petition is

being disposed of. It is made clear that all contentions are kept open and the same may be raised in the course of final hearing which may be considered by the learned Magistrate in accordance with Law.

8) Rule is discharged.

9) Writ petition stands dismissed and disposed of.

(SMT. SADHANA S. JADHAV, J.)