

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 379 OF 2017

Vinod D. Dhas

... Applicant

Vs.

Laxman Charu Kamble and another

... Respondents

Mr. G. K. Jadhav Advocate for Applicant

Ms. N. S. Jain APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATED : 18th APRIL, 2017.

P.C.

1) Heard.

2) Applicant herein being aggrieved by the order dated 27/02/2017 passed by Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai, has filed present application. Applicant herein is accused in C.C. No. 2263/SS/2013. Applicant herein had filed an application under section 311 of the Code of Criminal Procedure, 1973 on 06/12/2016 seeking relief recalling the witness. The reason assigned by the applicant for recalling the witness was that he had engaged an Advocate. He had not given all the papers to the Advocate and

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therefore, Advocate had sought discharge. Earlier Advocate was discharged from representing the applicant. Cost of Rs. 300/- was imposed. Applicant had therefore, engaged another Advocate. That the evidence of P.W. 1 was recorded in the absence of the applicant. According to the applicant, subsequent Advocate had not taken sufficient instructions from the applicant and had proceeded to represent the accused. At that time, applicant was arrested in another offence and therefore, he could not remain present. Advocate engaged by the applicant had proceeded to cross-examine the witness in the absence of the accused. Subsequently, applicant had read the deposition of the prosecution witness which included the examination-in-chief. According to him, in the interest of justice, it would be necessary to recall the witness.

3) Perused the order passed by the learned Magistrate. The learned Magistrate had rightly observed that trial had attained finality. After conviction, accused had remanded the case to allow the accused to take cross-examination to P.W. 2 and had directed the learned Magistrate to decide the matter afresh after cross-examination of Rajesh Etam. It was clear that case

was remanded only for the purpose of cross-examination of P.W. 2. At that stage, applicant had filed an application for cross-examining the complainant on the ground that Advocate engaged by him has cross-examined the witness in his absence. The learned Sessions Judge, by an order dated 01/09/2016 had directed the Trial Court with direction to permit the appellant to cross-examine Rajesh Etam i.e. P.W. 2. By no stretch of imagination, it can be said that relief granted by the Appellate Court can be extended for the purpose of cross-examining P.W. 1 also.

4) The learned Court had rightly rejected the application. No case for interference is made out. Hence, application stands rejected.

(SMT. SADHANA S. JADHAV, J.)