

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

CRIMINAL WRIT PETITION NO.2661 OF 2016

Reggie Lawrence Fernandes

...Petitioner

Versus

M/s. Kokan Mercantile Co-operative Bank and
anr.

...Respondents

Mrs. Hemen S. Thakkar for the petitioner.

Mr. Harshawardhan Salgaonkar i/b. Mr. Anwar M. Landge for
respondent no.1.

Mr. N. B. Patil, APP for the respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd AUGUST, 2017.

P.C. :

1. The petitioner has challenged order dated 26th February, 2016 passed by the Metropolitan Magistrate 56th Court, Mazgaon, Mumbai, rejecting the application for recalling the witness preferred by the petitioner. The petitioner is facing the prosecution for an offence punishable under section 138 of Negotiable Instruments Act.

2. The evidence of the complainant was recorded and the said witness was cross examined at the instance of the advocate representing the petitioner. It appears thereafter that the advocate representing the petitioner was changed and subsequently the application for recalling

witnesses was preferred on 23rd November, 2015. In the said application, it was stated that on account of some reasons the advocate representing the petitioner was changed and on perusal of the entire papers and notes of evidence, the new advocate had noticed certain omissions by the earlier advocate. It was also revealed that certain question pertaining to the instruments in relation to the subject complaint had remained to be asked and therefore the new advocate preferred the complainant may be recalled. In exercising powers under section 311 of Cr. P.C., the trial Court rejected the said application by order dated 26th February, 2016. It was observed by the trial Court that change of advocate could not be ground for recalling the witness and also that no reasons were specified in the application to recall the said witness. The petitioner thereafter preferred a revision application before the Court of Sessions which was rejected by order dated 19th May, 2016 on the ground that the same is not maintainable as the impugned order was interlocutory in nature. The petitioner has therefore approached this Court challenging the aforesaid order.

3. Learned advocate for the petitioner submitted that in the interest of the justice witness may be recalled as certain crucial questions are remained to be put up to the said witness. It is submitted that the advocate representing the petitioner was required to be changed.

Thereafter it was noticed that there is necessity of recalling the witness for further cross examination. It is submitted that in the interest of justice for just decision of the case witness / PW-1 (complainant) may be recalled.

4. Learned advocate for respondent no.1 submitted that the application was preferred to protract the proceedings before the trial Court. It is submitted that sufficient opportunity was given to the petitioner to cross examine the witness. The advocate representing the petitioner had conducted the cross examination of the witness on 5th April, 2014, 31st July, 2014, 1st December, 2014 and 24th March, 2015. It is submitted that the application for recall of witness was preferred belately on 7th December, 2015. The statement of the accused was recorded under section 313 of Cr. P.C. on 28th April, 2015. He relied upon the decision of the Supreme Court in the case of A.G. Vs. Shiv Kumar Yadav and another AIR 2015 (SC) 3501.

5. I have perused the documents on record. The petitioner / accused was given sufficient opportunity to cross examine the witness. The advocate representing the petitioner has extensively cross examined the witness on several occasions. Thereafter, the application for recall of witness was preferred belately. On account of the said application the proceedings before the trial Court are stalled. In the application for

recalling of witness no details were furnished as to why the witness is required to be recalled. The only reason mentioned was that the advocate representing the applicant /petitioner has changed and that certain questions with reference to instrument in question were remained to be asked to the witness

6. The powers under section 311 of Cr. P .C. can be exercised for the just decision of the case. However in the present case, for the reasons stated above, I find no reasons to recall the witness. The cross examination of the witness was conducted in detail by the earlier advocate and sufficient opportunity was given to the accused to defend. The order passed by the trial Court appears to be well reasoned and the same do not require interference.

7. In view of the above, no case is made out for granting relief as prayed in this petition. Hence, I pass the following order;

:: ORDER ::

. Writ Petition No.2661 of 2016 is dismissed.

[PRAKASH D. NAIK, J.]