

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

CRIMINAL APPLICATION NO. 800 OF 2017

Vishnu Kumar Bhaiya

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

Mr. S.V. Marvadi, Senior Advocate a/w Mr. Biju Joseph a/w Mr. Benny Joseph a/w Mr. Amrudh Lad a/w Ms. Roumita Day i/b B.J. Law Offices LLP for the Applicant.

Mrs. Rekha Singala for Respondent No.2.

Mr. N.B. Patil, A.P.P. for the Respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATED : 09 AUGUST, 2017.

P.C. :-

1 The applicant has challenged the order passed by the Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, on 24.07.2017 rejecting his application for recall of DW-2 which was preferred under Section 311 of Cr.P.C., as well as the order for closing the defence evidence.

2 It is submitted that the applicant had preferred an application for examination of defence witnesses on 25.01.2008. The said application was allowed on the same day. Thereafter, the matter proceeded for a long period of time. The examination-in-chief of DW-1 was recorded and it was over on 05.10.2010 and the cross-examination began on the same day

which was concluded on 05.04.2017. It appears from the record that thereafter the evidence of DW-2 was recorded and it was over on 10.07.2017. The applicant preferred an application for recall of DW-2 which has been rejected by an order dated 24.07.2017. However, while passing the said order, the Court has also closed the defence evidence.

3 The learned Advocate for the applicant submitted that permission to examine defence witnesses was granted by the same Court on 25.01.2008 and hence, the trial Court has no power to recall its own order. It is further submitted that the applicant is not responsible for delaying the trial. The cross-examination of DW-1 went on for a long period of time from 05.10.2010 till 05.04.2017. The learned counsel for the respondent, however, disputed the submissions advanced by the learned counsel for the applicant. It is submitted that the accused were delaying the trial and on several occasions they were absent and even warrants were issued which has resulted in delay in concluding their evidence. It is further submitted that the trial is pending since 1997. It is further submitted that no grounds were made for recalling DW-2 and hence the trial Court has rightly rejected the application. It is submitted that since accused were protecting the trial, the trial Court has closed the evidence of defence.

4 I have perused the documents on record. It is apparent that the permission was granted by the trial Court for examination of defence witnesses on 25.01.2008. The trial was in progress and the evidence was recorded for a long period of time. I have perused the order dated 24.07.2017. No ground is made for recalling DW-2. However the trial Court ought not to have closed the defence evidence in view of the earlier order granting permission to examine the defence witnesses. However, considering the fact that the trial is pending for a long period of time, the direction can be issued to conclude the trial expeditiously by granting permission to the applicant to examine the defence witnesses within a stipulated time. Hence, the following order :-

ORDER

- i) The order dated 24.07.2017 closing the defence evidence is quashed and set aside.
- ii) The part of order dated 24.07.2017 rejecting the application for recalling DW -2 is confirmed.
- iii) The applicant is permitted to prefer the application for issuing summons to the three defence witnesses viz. DW-3, DW-4 and DW-5 on 10.08.2017.

- iv) The trial Court may issue summons to the witnesses which can be made returnable within two weeks.
- v) The evidence of defence witnesses may be concluded within a period of three weeks from 10.08.2017.
- vi) The trial Court is directed to conclude the entire trial within a period of two months from today.
- vii) The Application is disposed off.

(PRAKASH D. NAIK, J.)