

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2826 OF 2016

Mr. Sadashiv Srinivas Shetty Petitioner

Versus

The State of Maharashtra Respondent

Mr. Siddharth Jaiswal for Petitioner.

Mr. S.R.Agarkar, APP for Respondent/State.

CORAM : RAVINDRA V. GHUGE J.
DATE : MARCH 15, 2017.

P.C.

. The Petitioner is aggrieved by the order dated 17/6/2015, by which the Criminal Application No. 1107 of 2014 filed by the Petitioner has been dismissed. The petitioner is also aggrieved by the order dated 4/6/2014 passed by the trial court, by which his Application Exh. 36 has been rejected.

2. The Petitioner had moved Application Exh. 36 praying for recalling of the prosecution witness no.1 under Section 311 of the Code of Criminal Procedure. The grounds putforth for praying for such recalling is that the earlier Advocate representing the

Accused/Petitioner did not cross examine the said witness to the extent of the interest of the Petitioner. A short cross-examination was conducted and having not cross-examined the said witness properly, it was likely to defeat the case of the Petitioner.

3. The trial court has rejected the Application on the ground that the Petitioner is attempting to fill up the lacuna and hence it would amount to harassment to the witness. The Revisional Court by the impugned judgment has also taken the same view.

4. I have considered the strenuous submissions of the learned counsel for the Petitioner and the learned APP on behalf of Respondent/State.

5. Section 311 of the Code of Criminal Procedure would permit recalling of a witness, if it is noticed that the case of the Applicant was not properly put forth either in cross-examination or having failed to properly cross-examine the witness so as to ensure that the case of the applicant is properly put forth.

6. I have gone through the cross-examination of prosecution witness no.1. The said witness has averred against the Manager to the extent of his role in the case. It is stated that he used to take the money from the customers and would pass over only 40% of the amount to the girls like the prosecution witness no.1.

7. I find that the cross-examination is skeletal in nature. It cannot be ignored that under Section 3 of the Immoral Traffic (Prevention) Act, 1956, even the use of the premises owned by the Petitioner for prohibited acts would render the Petitioner liable for punishment. There is hardly any question posed to the prosecution witness no.1 as to when and how were the said premises utilized, keeping in view the contention of the petitioner that he only had a Bar and an eating place and did not have any rooms in the said premises.

8. Considering the above factors, I find that by imposing costs upon the Petitioner, an opportunity to further cross-examine the prosecution witness no.1 could be granted. The hardships faced by the prosecution witness no.1 could be softened by awarding costs.

9. In the light of the above, this petition is partly allowed. The impugned order dated 4/6/2014 passed by the trial court, rejecting Application Exh. 36 and the impugned judgment dated 17/6/2015 delivered by the learned Additional Sessions Judge, Gr. Bombay are quashed and set-aside. Application Exh. 36 is allowed.

10. The trial court would issue notice for recalling the prosecution witness no.1 namely, Mariam Gilbert Was. The Petitioner shall deposit an amount of Rs 10,000/- before the trial court within a period of three weeks from today and after depositing the said amount, the same would be paid to the prosecution witness

no.1. Failure to deposit the said costs, would result in discharging of the prosecution witness no.1 and the Petitioner would be precluded from cross-examining her.

(RAVINDRA V. GHUGE, J.)