

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

WRIT PETITION NO. 3647 OF 2016

Dr. (Mrs.) Usha Gurha & Ors.

....Petitioners

Versus

The State of Maharashtra & Ors.

....Respondents

Mr. S. Shamim i/b. Shamim & Co. for the petitioners.

Mrs. M.R. Tidke, APP for the State.

Mr. R. Satyanarayanan for respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 23rd NOVEMBER, 2017

P.C. :

1. Heard Mr. S. Shamim, learned counsel for the petitioners, Mr. R. Satyanarayanan, learned counsel for respondent no.2 and Mrs. M.R. Tidke, learned APP for the State.

2. Considering the narrow controversy involved, the petition is disposed of finally at the stage of admission.

3. The petitioner herein who was an accused in Criminal Case No.2117/SS/2011 has challenged the order dated 18th July, 2014 whereby the learned Metropolitan Magistrate, 44th Court, Andheri at Mumbai had closed the cross of the complainant.

4. A perusal of the roznama dated 18th July, 2014 reveals that the complainant himself was absent on 18th July, 2014 and that the application for exemption of the complainant was rejected. The accused had also sought an adjournment and the said application was also

rejected and cross was closed. Needless to state that the accused could not have cross-examined the complainant, since the complainant himself was absent on the relevant date. The order is patently bad and the same cannot be sustained.

5. Mr. S. Shamim, learned counsel for the petitioners and Mr. R. Satyanarayanan, learned counsel for respondent no.2 have submitted that the matter is already scheduled before the trial court on 14th December, 2017 at 11:00 a.m. Mr. R. Satyanarayanan, learned counsel for the respondent no.2 submits that the complainant will remain present before the trial court on 14th December, 2017 and that the petitioners can cross examine the complainant on the said date. Both the parties have agreed not to delay the trial. Statements are accepted.

6. Under the circumstances, the petition is allowed. The impugned order is set aside. The petitioners are permitted to cross-examine the complainant on 14th December, 2017. The petitioners and the respondents to appear before the trial court on 14th December, 2017 at 11:00 a.m.

7. Considering the fact that the case is pending since 2011, the learned Trial Judge is directed to dispose of the case expeditiously, in any event, within a period of eight months from the date of this order.

8. Writ Petition No. 3647 of 2016 is disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)