

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1398 OF 2016

Mr. Suresh Dolas

.....Applicant

V/s.

State of Maharashtra and anr.

.....Respondents

\* \* \* \* \*

Mr. Sathyanarayanan, Advocate for the applicant.

Ms. Anamika Malhotra, APP For respondent no.1, State.

Ms. Zenobia S. Irani, Advocate for respondent no.2.

**CORAM :- SMT. R.P. SONDURBALDOTA, J.**

**DATED :- 22<sup>nd</sup> FEBRUARY, 2017.**

**P.C. :-**

1). This application is directed against the concurrent findings of the Courts below as regards the application filed by the petitioner/original accused under Section 311 Criminal Procedure Code for recall of PW1 for further cross-examination. The application was filed on 10<sup>th</sup> November, 2014 in which the only reason stated for recall is occurrence of certain developments since the time of completion of cross-examination. The developments

referred to by the applicant are the developments in the civil proceedings between the parties relating to the same subject matter as in the complaint.

2). The cross-examination of P.W.1 was completed on 14<sup>th</sup> March, 2013. The application for recall was filed on 10<sup>th</sup> November, 2014. The Courts below noted that the applicant was already afforded full opportunity to cross-examine P.W.1 so as to test credibility of his case and his deposition. As regards the orders passed in the civil proceedings proposed to be relied upon by the applicant the Trial Court observes that the applicant is at liberty to file certified copies of the orders which according to him are essential for decision of the case.

3). There is no infirmity in the above view taken by the courts below. As has been rightly noted by the Trial Court the object of Section 311 Criminal Procedure Code is to enable the Court to arrive at the truth. The discretion thereunder must therefore be exercised with circumspection and be guided by the object of arriving at a just decision. The provision cannot be permitted to be used for filling up lacuna in the defence. Hence, the application is dismissed.

**(SMT. R.P. SONDURBALDOTA, J)**