

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.195 OF 2017
(Chandrashekhar Harinarayan Ingole vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri V.D. Darne, Advocate for applicant.
Shri P.S. Tembhre, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 4, 2017

Heard Shri Darne, learned Counsel for
applicant, and Shri Tembhre, learned Additional Public
Prosecutor for respondent.

Challenge in this application is to order of
rejection of application by learned trial Court for
allowing recalling of prosecution witness no.3 Vidhi,
minor daughter of accused, who is tried for the offences
punishable under Sections 302, 304-B and 498-A of
Indian Penal Code for causing death of his wife.

Shri Darne, learned Counsel for applicant,
has submitted that prosecution witness Vidhi till
recording of her evidence was staying with her grand-
parents, who are parents of her deceased mother and on
recording of her evidence, was given in custody of Rupali
Vikrant Chaudhari, who is sister of applicant. It is
contended that after giving into custody of Rupali
Chaudhari, Vidhi is stated to have informed her that she
was pressurised by one Bopache, Court Moharil and,

therefore, she has deposed against accused. It is submitted that for this reason, it is necessary to recall Vidhi to bring on record true facts and for that purpose, has relied upon judgment of Hon'ble Apex Court in the case of Mohanll Shamji Soni vs. Union of India and another (AIR 1991 SC 1346).

Shri Tembhre, learned Additional Public Prosecutor for respondent, has opposed the application and contended that Vidhi is duly cross-examined and she is also suggested about alleged pressure brought on her to depose against accused, which suggestion has been denied. Learned Additional Public Prosecutor has pointed out that in para 8 of the impugned order, learned trial Judge has specifically stated that while recording evidence of minor girl Vidhi, he did not notice any abnormality and her evidence was recorded in a most friendly atmosphere and from her evidence, he did not notice that she was under any kind of pressure. It is, therefore, contended that there is no substance in the application and, hence, same be rejected.

Perusal of evidence of minor girl at Exh. 41 reveals that she has stated about incident involving applicant to have ignited match-stick and to have thrown one matchstick on the person of deceased. On perusal of cross-examination, said witness appears to have been cross-examined on material aspects, which have come on record in her examination-in-chief and in fact, she has denied suggestion put to her that she was deposing falsely on the say of her grandmother and maternal aunt. Perusal of evidence of Vidhi does not establish that there

is any ambiguity in her evidence, which is required to be clarified. In fact, learned trial Court has noted that at the time of recording evidence of this witness, she was not found to be under pressure.

In that view of the matter, only because of fact of said witness, after her evidence, being given in custody of Rupali, who is sister of accused and claiming that Vidhi has deposed on the say of Court Moharil, by itself would not give any opportunity to applicant to recall such witness even if she has stated to Rupali that she has deposed on the say of Court Moharil or even by going further that she was pressurised by said Court Moharil in view of the fact that she is specifically stated to have been suggested to that effect, which suggestion has been clearly denied by witness in clear terms when she has deposed that nobody had told her to depose. Moreover, it is material to note that evidence of this girl is also corroborated by evidence of member of Child Welfare Committee, who has recorded her statement.

Considering facts involved in the application and as accused is given full opportunity to cross-examine the witness, who is prayed to be recalled, I do not find any substance in the application as even in the case of **Mohanlal Shamji Soni** (cited supra), the ratio laid down by the Hon'ble Apex Court is that opportunity to rebut should be given to other party whenever new evidence is to be admitted. Undisputedly, power to recall witness can be exercised at any stage of proceedings. However, it is necessary to keep in mind that such opportunity has to be given if evidence of witness prayed to be recalled is

essential for just decision of the case.

In the application in hand, from the evidence of Vidhi, it does not appear that any case is made out to recall her. In that view of the matter, criminal application is devoid of merits and hence, the same is dismissed.

JUDGE

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