

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

CRIMINAL WRIT PETITION NO.650 OF 2017

Mahesh s/o Devdatta Gupta

..vs..

The State of Maharashtra, through Deputy Director, Industrial Safety and Health,
Chandrapur

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

Court's or Judge's Order

Shri Atul Pande, Counsel for the petitioner.
Shri R.S. Nayak, Addl.P.P. for the respondent/State.

CORAM : V.M. DESHPANDE, J.

DATED : JULY 26, 2017.

Heard learned counsel Shri Atul Pande for the
petitioner.

By the present petition, challenge is set up to
order passed by learned Additional Sessions Judge (Court No.4)
at Chandrapur below Exhibit 27 in Criminal Appeal No.55 of
2011. By the said order, learned Additional Sessions Judge at
Chandrapur rejected application Exhibit 27 which was filed by
the petitioner under Section 391 of the Code of Criminal
Procedure, 1973 for recording additional evidence by way of
further cross examination of the complainant.

The present petitioner was prosecuted for
committing of breach of safety norms provided under Section

7A(2)(a) of the Factories Act, 1948 punishable under Section 92 of the said Act in Summary Criminal Case No.15734 of 2004. By the judgment and order of conviction dated 1.3.2011, learned Chief Judicial Magistrate at Chandrapur in the said criminal case convicted the petitioner.

Being aggrieved by such conviction, Criminal Appeal No.55 of 2011 is preferred by the petitioner before the Sessions Court at Chandrapur. During the pendency of the said appeal, an application under Section 391 of the Code of Criminal Procedure, 1973 for recording additional evidence by way of further cross-examination of the complainant is filed. The reasoning for moving this application for cross-examination of the complainant is, when the complainant was under the cross-examination, counsel for the petitioner did not put relevant questions to him. Therefore, permission be granted for cross-examination.

Learned Judge of the Court below, in my view, has rightly considered the application negatively. Further, a reliance is placed of the Honourable Apex Court by learned counsel for the petitioner in the case of Rajendra Prasad ..vs.. Narcotic Cell, reported at 1999 Law Suit (SC) 654, in my view is misplaced since facts in the case cited *supra* and in the present case are altogether different.

In the present case, the application is sought to be

moved since counsel for the petitioner could not put relevant questions to the complainant, is the reason put forth for recalling of the complainant. In my view, the same is nothing but an afterthought. Hence, no interference is necessary. The criminal writ petition is dismissed.

JUDGE

!! BRW !!

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