

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 1190/2017

(DEEPAK DINESHBHAI KOTHARI VERSUS THE STATE OF MAHARASHTRA, THR. PSO PS
LAKADGANJ, NAGPUR)

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

Court's or Judge's orders

Mr. A.C. Jaltare, counsel for the petitioner.
Mr. A.M. Joshi, A.P.P. for the respondent.

CORAM : REVATI MOHITE DERE, J.

DATE : DECEMBER 20, 2017.

Heard learned counsel for the parties.

By this petition, the petitioner has impugned the order dated 24.11.2017, by which the learned Judicial Magistrate First Class, Court No.3, Nagpur was pleased to reject the petitioner's application for recall of witnesses PW1 and PW3 for further cross-examination, i.e. Exhibit 19, in Summary Criminal Case No.3942/2012.

Learned counsel for the petitioner submitted that at the time of preparing the arguments of the case, the petitioner's advocate realized that the earlier counsel for the petitioner-accused had not asked certain material questions to PW1 and PW3. He submitted that infact, witnesses PW1 and PW3 are required to be confronted on certain material points and that it is also necessary to place on record certain omissions, which were not brought on record, by the earlier counsel. He submitted that the recall of the said witnesses was essential for a just decision in the case. He further submitted that infact, the earlier counsel had also filed an affidavit stating that due to his age factor, certain omissions and material questions were remained to be asked in the cross-examination of PW1 and PW3.

Learned A.P.P. opposed the petition. He submitted that the matter is posted for final arguments and that the case cannot be re-opened by permitting the petitioner-accused to cross-examine the prosecution witnesses again and by filling in the lacunae.

Perused the papers including the impugned order dated 24.11.2017. Admittedly, the petitioner-accused has preferred an application (Exhibit 19) under Section 311 of Cr.P.C. seeking recall of PW1 and PW3, on the premise that the earlier counsel for the petitioner-accused had failed to put certain material questions and omissions to the said witnesses in the cross-examination. A perusal of the impugned order shows that the case is of the year 2012; that charge was framed on 05.04.2016 as against the petitioner-accused for the alleged offences punishable under Sections 279, 337 of I.P.C.; that the accused was absent on a majority of dates from 2012 to 2016; that the prosecution witnesses were examined in 2016 and the matter was posted for hearing final arguments on 15.11.2017. It is not a case, where witnesses have not been cross-examined at all. All the witnesses have been cross-examined. It appears that there was a change of advocate in November-2017, pursuant to which the new advocate filed an application under Section 311 of Cr.P.C. for recall of witnesses, i.e. PW1 and PW3. The said application is also bereft of the nature of material questions and omissions that were omitted by the earlier advocate. The impugned order dated 24.11.2017 can neither be said to be perverse nor unsustainable in law, warranting interference in writ jurisdiction.

Accordingly, the petition is dismissed. The learned trial Court shall proceed to decide Summary Criminal Case No.3942/2012 on its own merits, uninfluenced by the observations made in this order.

JUDGE

APTE