

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.66 OF 2018

Shri Dharmendra Gautam
S/o Shri Ram Pyare Singh,
Age 49 years, Service,
Indian National,
R/o GPD-4/5, Government
Quarters, Porvorim Goa .. Petitioner

V/s

State
Through Central Bureau of
Investigation (ACB),
Alto Bambolim Goa. .. Respondents

Shri Pavithran A.V., Advocate for the Petitioner.

Shri Mahesh Amonkar, Special Public Prosecutor for the
Respondent.

CORAM :- C. V. BHADANG, J.

Date : 6th June, 2018.

ORAL JUDGMENT :

Rule made returnable forthwith. The learned Special Public Prosecutor waives service for the respondent. Heard finally by consent of parties.

2. The challenge in this petition, at the instance of the petitioner/accused no. 2, is to the order dated 03.11.2017 (below Exhibit-160), thereby refusing to recall PW-1 (complainant) for the

purpose of cross-examination.

3. PW-1 (complainant) was cross examined on behalf of the petitioner and at the stage when PW-1 was to be cross examined, on 04.11.2016 on behalf of the petitioner, time was sought on the ground of illness of the Counsel. Accordingly, time was granted. However, on 05.11.2016, again an application for adjournment was filed, which was objected by the learned Public Prosecutor. The said request for adjournment was rejected. The record shows that the petitioner filed an application under Section 311 of the Cr.P.C. for recalling PW1 along with a Medical Certificate of the Counsel. The learned Special Judge, however, by the impugned order, has dismissed that application. The learned Special Judge had come to the conclusion that the Medical Certificate is manipulated. This is for the reason that the certificate, which is produced by the petitioner, is dated 04/11/2016 while the application for recall came to be filed on 02/11/2016. For this reason alone, it cannot be said that the Medical Certificate is manipulated. I have perused the Medical Certificate and I do not find that it can be said to be manipulated. In para 9, the learned Special Judge has then observed that change of Counsel is not a ground for directing recall. However, the learned Counsel for the petitioner points out that the recall

was not sought on the ground of change of Counsel, but on the ground of illness of the Counsel.

4. Considering the overall circumstances and after hearing the parties, I find that an opportunity has to be granted to the petitioner to cross-examine PW1. It is true that PW1 is from Delhi and will have to attend the case for the purpose of cross-examination. The learned Counsel for the petitioner, therefore, submitted that the petitioner is willing to incur costs as may be determined by this Court. The learned Counsel for the petitioner undertakes that PW1 shall be cross-examined positively on the next date or any other date as may be fixed by the learned Special Judge. In such circumstances, the following order is passed :

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside, subject to costs of Rs.5,000/-, to be deposited before the learned Special Judge on or before the next date of hearing.
- (iii) On payment of costs, as aforesaid, PW1 shall be recalled for being cross-examined on behalf of the petitioner.
- (iv) The petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.