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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 119 OF 2016

Umesh Kashinath Thakur & anr.	...Applicants
Vs.	
State of Maharashtra & anr.	...Respondents (Org.Complnt.)

....

Mr. Kedar J. Patil for the applicants.
Ms. M.R. Tidke, APP for State.
Mr. Rajesh B. Parab for respondent No.2.

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CORAM : M.S.KARNIK, J.
DATE : 26th MARCH, 2018.

P.C. :

Heard learned Counsel for the applicants and
learned Counsel for respondent No.2.

2. During pendency of the trial respondent No.2/
complainant filed an application for producing certain
photographs. The trial Court by the impugned order dated 12th
January, 2016 allowed production of the photographs. The
application has been allowed in view of the provisions
of Section 242 of the Code of Criminal Procedure. Section 242
reads thus :-

“Section 242 :- Evidence for prosecution. - (1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under Section 241, the Magistrate shall fix a date for the examination of witnesses :

[Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.]

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

3. Reading of Sub-section (2) of Section 242 makes it clear that it is on the application of the prosecution, the Magistrate may issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. Admittedly the application to produce the photographs

has been made by respondent No.2/original complainant.

4. In this view of the matter, the application filed by respondent No.2 was not tenable under Section 242 (2) of the Code of Criminal Procedure. The impugned order therefore deserves to be quashed and set aside. It is made clear that if an appropriate application is made by respondent No.2 for production of the photographs, the same may be considered by the trial Court on its own merits and in accordance with law.

5. The Criminal Application is allowed.

(M.S.KARNIK, J.)