

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 467 OF 2018

Mr. Ashfaq Ahmad alias Munna Warisali
Ansari

... Petitioner.

Versus

State of Maharashtra

... Respondent

Mr. R. R. Tripathi, Advocate for the Petitioner.
Mr. H. J. Dedhia, APP for the State.

CORAM : REVATI MOHITE DERE, J.

DATE : FEBRUARY 12, 2018

P.C.

1 By this petition, the petitioner has impugned the order dated 12.12.2017 passed by the Additional Sessions Judge, Thane, by which the learned Sessions Judge has discarded the evidence of the defence witness, as he was not present for cross examination, on the date given by the trial court.

2 Perused the papers.

3 Admittedly, the prosecution led their evidence and, thereafter, filed a closure purshis. Thereafter, the accused was examined under section 313 of the Criminal Procedure Code and in support thereof, DW-1 was examined in October, 2017. Thereafter, the second defence witness - Wasid Mohammed Mukum - stepped into the witness box and he was examined by the Petitioner's Advocate. Learned APP cross-examined the said witness partially on the said date i.e. in November, 2017 and thereafter the matter was adjourned to 02nd December, 2017. It is informed that as the concerned court was not available on 02nd December, 2017, the matter/case was adjourned to 12nd December, 2017. On 12nd December, 2017, as the said defence witness - Wasid Mohammed Mukim - was not present for cross-examination, the learned Sessions Judge passed the following order :

“Order -

The witness is not present for cross-examination therefore, the evidence of this witness is discarded.

sd/-
12.12.2017
Addl. SJ.”

4 Learned counsel for the Petitioner submits and assures this court that the said witness - Wasid Mohammed Mukim - would be present in the trial court on 20th March, 2018 for cross examination and/ on any other date. Statement accepted.

5 In view of the aforesaid statement made by the learned counsel for the petitioner, writ petition is allowed and the impugned order dated 12.12.2017 is quashed and set aside.

6 It is made clear, that if on 20.03.2017 the DW-2 - Wasid Mohammed Mukim - does not remain present for further cross-examination, the learned Additional Sessions Judge is at liberty to pass appropriate orders.

7 The Petition is disposed of in the aforesaid terms.

 Parties to act on an authenticated copy of this order, duly issued by the Registry of this court.

(REVATI MOHITE DERE, J.)