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

WRIT PETITION NO.3865 OF 2018

Mohd. Salim Abdul Kadar Jamadar

..Petitioner

Vs

The State of Maharashtra

..Respondents

Mr. Sudeep Pasbola I/b Raunak Naik for Petitioner.

Mr. A.R. Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 1st October 2018.

P.C.:

1] The present petition under Article 227 of the Constitution of India is filed by the original accused No.3, challenging the Order dated 23.7.2018 passed below Exhibit-136 by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.459 of 2014, allowing the said application, thereby permitting the prosecution to correct the evidence (examination-in-chief) of PW No.5.

2] Heard the learned counsel for the petitioner and the learned APP for State. Perused the record.

3] The record indicates that, the examination-in-chief of the PW No.5 was recorded on 5.1.2018 and the said witness was cross-examined at

length by the learned counsel for all the accused persons. That the cross-examination of the said witness was concluded on 22.2.2018 and endorsement to that effect has been made by the learned Trial Court on the notes of evidence. That on 13.7.2018 an application below Exhibit 136 was filed by the prosecution for correction in the evidence of PW No.5 stating that, in last sentence in para No.3 of the notes of evidence, the words “Jaisa Bola Gaya” be added before the words “Saleko Jinda Mat Chhodo”. The original sentence in para-3 of evidence of PW No.5 reads as, “Maro Maro Saleko, Jinda Mat Chhodo...Police Ko Hum Dekh Lenge”. By the said application below Exhibit 136, the prosecution prayed before the Trial Court that the said words i.e. “Jaisa Bola Gaya” be added in examination-in-chief of PW No.5 in the aforesated line in para-3 so that the said statement would be read as ”Maro Maro, Jaisa Bola Gaya, Saleko Jinda Mat Chhodo...Police Ko Hum Dekh Lenge”.

4] The accused persons opposed the said application and it is the contention of the learned counsel for the petitioner that, whether the said words required to be added and even if those are added, the accused be granted an opportunity to counter with the same at the time of final argument of the said case and therefore even if the said words are kept on

record, those need not be treated to be an admitted position and the evidence of the said witness need not be corrected or accepted to be corrected to that extent. The learned Trial Court by the impugned Order dated 23.7.2018 passed below Exhibit 136 has allowed the said application predominantly on the ground that, the learned Judge did recollect that not only the earlier witness i.e. of PW No.4 had uttered the said words, but the said words were also uttered by PW No.5, however, were not typed by the typist.

5] It is to be noted here that, the copy of the evidence was handed over to the accused so also to the Public Prosecutor after recording of evidence and after effecting necessary corrections in it same was accepted and taken on record by the Trial Court on 22.2.2018. It is well settled position of law that, minor corrections in evidence are permitted to be effected under section 278 of Cr. P.C. However, in the present case, the additions of the words “Jaisa Bola Gaya” in the evidence of PW No.5 in last line of para No.3 would change the complexion of his evidence and the examination-in-chief on which aspect the cross-examination has not been conducted by the accused persons.

6] In view thereof the Order dated 23.7.2018 is hereby quashed and set aside to the extent of permitting the prosecution for the correction effected and additions of the words “Jaisa Bola Gaya”. The said words through may remain on record, however, the petitioner is permitted to agitate all his contentions before the Trial Court at the time of final hearing of the said case including the addition of the said words and non cross-examination by him of the said witness to that effect, which has ultimate effect as per the provisions of law.

Petition is partly allowed in the aforesaid words.

Anil
Chandrakant
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Chandrakant
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(A.S.GADKARI, J.)