

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

CRIMINAL APPLICATION NO. 1267 OF 2018

Muthu Palani Lingatar

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr.Kushal Mor for the Applicant.

Mrs. Veera Shinde, APP for the Respondent – State

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : OCTOBER 24, 2018**

P.C.:

1. In this Criminal Application, the applicant prays that the order dated 4th April, 2018 passed by the learned Additional Sessions Judge, Gr. Bombay, rejecting the application below exhibit 120 for recalling PW-10 in Sessions Case No. 181 of 2013 be quashed and set aside.

2. I have perused Roznama dated 17th March, 2018 and 4th April, 2018. It appears that on 17th March 2018, the advocate of the present applicant i.e., original accused No.4 was absent and, therefore, PW-10 could not be cross-examined. The application for postponing the cross-examination though was made, however, it was rejected. It is to

be noted that if the defence advocate is absent, then the trial Court should ask the accused whether he wants to cross-examine the witness or not. Such noting is not there.

3. It is informed that thereafter, the matter was scheduled on 4th April, 2018 and on that date the advocate of accused No.4 moved an application for recalling PW-10 for cross-examination, but it was rejected. Thereafter, the Court was vacant for 4 to 5 months and, therefore, this Criminal Application was not filed immediately in a month of April or May. The applicant/accused is in prison. He is facing charge under Section 307 of the Indian Penal Code.

4. In view of this, the order dated 4th April, 2018 passed by the learned Additional Sessions Judge, Gr. Bombay is hereby quashed and set aside. The learned Additional Sessions Judge to proceed with the matter by allowing cross-examination of PW-10. Prosecution to keep present PW-10 on the next date so the defence can cross-examine PW-10 on that date and also immediately on the next date. Parties to co-operate the trial Court.

5. Criminal Application is allowed and is accordingly disposed of.

(MRIDULA BHATKAR, J.)