

Anand

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

CRIMINAL APPLICATION NO. 1241 OF 2017

Shri Sitaram Dina Mandal .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. S. I. Kantharia, Advocate, for the Applicant
Mr. V. Chate, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 30.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant has impugned the Order dated 27.10.2017 passed by the learned Special Judge, Thane, by which the Applicant's Application for re-calling the witnesses i. e. PW.1 and PW.2 came to be rejected.

3. Learned counsel for the Applicant submitted that the learned Judge proceeded to record the evidence of PW.1 & PW.2 including their cross-examination in the absence of the Applicant. He submitted that in fact, the DNA Report was produced after the

cross-examination of the said witnesses i. e. PW.1 & PW.2 - victim girl & mother, were examined. He submitted that Advocate appearing for the Applicant has not conducted the cross-examination as was required and hence, in the interest of justice, the said witnesses may be re-called.

4. Learned APP opposed the Application.

5. Perused the papers including the impugned order. Merely because the lawyer has changed would not be a ground for re-calling the witnesses for cross-examination. A perusal of the evidence of PW.1 & PW.2 shows that they have been cross examined by the earlier Advocate. Similarly, merely because the cross-examination of the witnesses was unsatisfactory cannot be a ground to re-call the witnesses. Hence, no interference is warranted in the impugned order.

6. Accordingly, the Application is dismissed. It is, however, made clear, that when the evidence of crucial witnesses is being recorded, the learned Judge to ensure that the Applicant is present in the Court in person or through Video conferencing.

(REVATI MOHITE DERE, J.)