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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5323 OF 2017

Chilimili Raju Naidu s/o. Narsinghrao ..Petitioner.

V/s.

State of Maharashtra & Ors. ..Respondents.

Mr.D.J. Deshmukh for the petitioner.

Mr.H.J.Dedhia, APP for the respondent-State.

Mr.Kanga for respondent No.2.

Ms.Veena Gyachandani for respondent No.3.

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 14, 2018

PC.:-

Heard respective parties.

2. In R.C.C. No.36/2010 the petitioner-complainant at the stage of evidence before the charge filed evidence closure purshis which was accepted by the Court on November 10, 2016.

3. The petitioner-complainant sought recall of the said order so that he can lead additional evidence. The said application Exhibit-96 came to be rejected by the learned Magistrate on March

21, 2017 which was confirmed by the Additional Sessions Judge, Kalyan in Criminal Revision No.46/2017 on November 13, 2017. Hence this petition.

4. The learned counsel for the petitioner submits that prayer of the petitioner for recall of the order of closure of evidence and to lead additional evidence is misread and misunderstood as a prayer for recalling of witness. According to him, in support of the documents which are already produced on record as reflected in the list of documents dated January 5, 2012 and January 5, 2008, he wants to examine the Administrator under the Displaced Persons Act.

5. *Per contra*, the learned counsel for the respondents strenuously opposed the claim and submit that the intention of the petitioner is to prolong the case and make the senior citizens suffer. According to them, since 2008 the proceedings are pending and the petitioner time and again had got the same adjourned. It is further claimed that the documents which are sought to be produced by application at Exhibit-96 are already part and parcel of the record and the request for production of additional

documents is moved of the same documents. It is further claimed that old proceedings of allotment of land in favour of respondent No.2 is sought to be agitated in a non maintainable proceedings.

6. Considered rival submissions.

7. Perused the application Exhibit-96. It is not in dispute that in the said application, it is nowhere stated that the petitioner-complainant wants to recall any of the witnesses who is already examined. All that he has prayed for is permitting him to examine one additional witness i.e. the Administrator under the provisions of the Displaced Persons Act, 1948.

8. It is required to be noted that the present petitioner has filed purshis for closing evidence before charge on November 10, 2016 which is read and recorded by the Court and immediately thereafter, perhaps on the next date i.e. November 24, 2016 has filed an application for permission to file additional documents and moved an application at Exhibit-96 on January 21, 2017 to lead additional evidence.

9. The claim of the petitioner that he should be permitted to file some documents as is reflected in Exhibit-96, in my opinion, does not warrant any consideration, particularly when it is

demonstrated by the learned counsel for respondent No.3 that those documents are already produced by the petitioner way back in 2012.

10. As such, the claim of the petitioner that he should be permitted to place on record additional document does not warrant any consideration and it is recorded that such prayer is rightly rejected.

11. This takes me to the next submission of the petitioner whether he has made out a case for examining the Administrator as prayed hereinabove.

12. Though the said prayer is agitated by the petitioner, the counsel for the respondents submit such prayer was not before the Courts below. However, perusal of the impugned orders passed by the Magistrate and the revisional Court takes this Court to the only conclusion that such prayer was made but was understood as recalling of witnesses under section 311 of the Code of Criminal Procedure.

13. In my opinion, both the Courts have misunderstood the prayer of the petitioner for summoning a witness i.e. the only

witness – the Administrator.

14. In the aforesaid aforesaid background, the prayer of the petitioner for examining additional witness i.e. the Administrator appointed under the provisions of Displaced Persons Act, in my opinion, needs to be allowed. However, default on the part of the petitioner in moving such a prayer cannot be allowed to the detriment of the respondents. This warrants me to work out the equity in favour of the respective parties.

15. In the aforesaid facts and in the interest of justice, I pass the following order :-

- (a) The petitioner shall move an application for issuing summons to the Administrator appointed under the provisions of the Displaced Persons Act, 1948 within the period of two weeks from today;
- (b) If such application is not moved within the stipulated period it would be deemed that the petitioner has no such right or claim to examine the said witness;
- (c) If such an application is moved, the learned Magistrate shall issue witness summons to the said witness, subject to the

condition that the petitioner shall deposit an amount of Rs.20,000/- towards costs before the Court of the Magistrate. Out of the amount of costs of Rs.20,000/-, Rs.10,000/- be given to each of the respondent Nos.2 and 3 before this Court respectively;

- d) The date on which the said witness i.e. the Administrator shall attend the Court, failure on the part of the petitioner to record his evidence and any prayer for adjournment will disentitle him from any relief of examining the said witness;
- e) The learned Magistrate shall make an endeavour that in case the said witness attends the Court, he shall complete the recording of evidence on the same date for which the petitioner has agreed to co-operate. If the petitioner fails to complete evidence of said witness on the same date or any later date, the learned Court below shall be at liberty to pass order of closure of evidence.

16. With the above observations, the petition stands partly allowed.

(NITIN W.SAMBRE, J.)