

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

CRIMINAL WRIT PETITION NO. 392 OF 2016

Sunil Shankar Patil

...Petitioner

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. M.B. Deshmukh for Petitioner.

Mr. Milind Deshmukh for Respondent No. 2.

Mrs. A.M. Malhotra, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 1st OCTOBER 2019

PER COURT:

1. Being aggrieved by the order passed by the Trial Court on 29th October 2015 thereby rejecting the prayer for the Petitioner for recalling the PW 1 Krian Jagannath for further re- examination, this petition is filed.

2. Learned counsel appearing for the Petitioner submits that, PW 1 Krian Jagannath in his cross examination has not stated in consistent with the prosecution case and rather he has damaged the prosecution case, and therefore, by invoking Section 311 of Code of Criminal Procedure, PW 1 Krian Jagannath could ought to have been recalled, so as to give opportunity to the prosecution to declare him hostile and then take further re-examination. According to the learned counsel appearing for the

Petitioner the version in cross examination of PW 1 Krian Jagannath would damage the prosecution case and ultimately it would affect on the case of the Petitioner who is victim. Therefore, relying upon the pleadings in the petition, annexures thereto, learned counsel for the Petitioner submits that, petition may be allowed.

3. On the other hand, learned counsel appearing for Respondent No. 2 invites attention of this Court to the reasons assigned in the impugned order and submits that, petition may be rejected.

4. Upon appreciating rival contentions and perusal of the impugned order would make it abundantly clear that, if at all the prosecution wanted to examine PW 1 Krian Jagannath, the Public Prosecutor ought to have sought permission of the Court to declare him hostile and thereafter, an opportunity to re-examine ought to have been availed by the prosecution. Learned Magistrate in Para 3, has adverted to the judgment of Hon'ble Supreme Court in the case of Dahyabhai Chhaganbhai Takkar V/s. State of Gujrat, 1964 Lawsuit (SC) 87, and relying upon the relevant provision, rejected the prayer of the Petitioner. The reasons assigned by the learned Magistrate in Para 3 are keeping in view the position in law that, unless the prosecution seeks permission to declare witness hostile, question of allowing prayer of the prosecution to re-examine

the said witness would not arise. The reasons assigned by the Trial Court cannot be said to be perverse or unreasonable. It appears that, the case is pending from the year 2011 and the Trial Court is obliged to conclude the trial at the earliest. In that view of the matter, no case is made out to cause interference in the impugned order. Hence, writ petition stands rejected.

5. However, rejection of the writ petition shall not be construed as an impediment to the prosecution agency to file application for recalling the said witness, if the prosecution is so advised.

[S.S. SHINDE, J.]