

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 552 OF 2019

Lata Bajoria]
A/1104, Highland Park]
Off New Link Road, Oshivara]
Andheri West, Mumbai 400 0058] **.....APPLICANT**

VERSUS

1. The State of Maharashtra]
2. Shri. Bimal Kumar Bajoria]
A/804, Highland Park,]
Off New Link Road, Oshivara]
Andheri West, Mumbai 400 0058] **..... RESPONDENTS**

Mr. Sameer Malik a/w. Mr. Sagar Shetty I/b. DSK Legal, Advocate for applicant.

Mr. K.H. Giri a/w. Ms. Dhirika a/w. Ms. Geeta Tripathi, Advocate for Respondent No. 2.

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

CORAM : S. S. SHINDE
DATED : 6th June, 2019

JUDGMENT

1. This application is filed with following substantive prayers:-

“a) this Hon'ble Court be pleased to pass an order allowing the present application under Section 482 of the Code of Criminal Procedure, 1973 and set aside the order of Ld. Metropolitan Magistrate, 66th Court, Andheri, Mumbai dated 02.04.2019.

b) this Hon'ble Court be pleased to direct the Ld. Metropolitan Magistrate, 66th Court, Andheri, Mumbai to rectify the statements wrongly recorded in the cross-examination statement PW/2587/2013 in the matter of State of Maharashtra V. Bimal Bajoria, in the interest of justice.”

2. Learned counsel appearing for applicant submits that, the trial has been commenced before 66th Metropolitan Magistrate. The applicant was cross examined on 04.09.2018, 11.09.2018, 05.10.2018 & 05.03.2019 before the Learned Metropolitan Magistrate, however, the statements recorded on such dates were neither read over to her her nor accepted by the applicant. The transcripts of the said evidence were neither verified nor signed by the applicant, at the time when the statement of the applicant was recorded before the Learned Metropolitan Magistrate. It is submitted that, subsequently, on receipt of the certified copy of the cross examination on 08.03.2019 recorded on 05.03.2019, the applicant learnt that there were material errors in the said certified copy of the evidence recorded, which are contrary to the statements made during cross examination on the said date. Therefore, applicant approached the Court Master on 12.03.2019 requesting to list the said application filed by the applicant seeking inter alia rectification of errors made in her evidence recorded during cross examination on 05.03.2019. It is submitted that the said application was

listed for hearing on 15.03.2019. It is submitted that, the said application has been rejected by the said Court which has caused injustice to the applicant. Bare perusal of certified copy of cross examination shows statement of denial to the suggestions put to the applicant during cross examination, have been wrongly recorded as admissions and vice versa for admission of the such suggestion thereby warranting rectification of the same. Therefore, learned counsel appearing for the applicant relying upon the averments in the application and grounds taken therein submits that application deserves to be allowed.

3. Learned counsel appearing for respondent no. 2 submits that everyday the statements recorded in the evidence were read over to the applicant and/or advocate representing her. If the applicant or her advocate wanted correction it should have been done on the same day, however, belatedly after 10 days application was filed for rectification which is not maintainable in view of judgment of Hon'ble Supreme Court in the case of *Mir. Mohd. Omar and others Appellants Vs. State of West Bengal Respondents reported in 1989 CRI.L.J. 2070*. Therefore, learned counsel appearing for respondent no. 2. submits that application may be rejected.

4. I have given due consideration to the rival submissions, with the able assistance of the counsel appearing for the parties perused the impugned order and also the material placed on record. The Trial Court in

the impugned order has made observations that the application filed by applicant is nothing but an attempt not only to rectify the evidence but her intention to change her entire verification and evidence which was deposed by her before the Court. It is also observed that, the Court has recorded the evidence in presence of her Advocate and Advocate for opposite side. It is also observed that parties were present and no one of them have raised any objection at the time of recording evidence, and now grievance is raised by filing application after more than 10 days of recording evidence. However, Learned Judge has observed in the impugned order that, at the most the application and order passed below the said application is required to be kept alongwith evidence. However, Learned Judge has rejected the application.

5. The view taken by the Trial Court cannot be said to be unreasonable or contrary to the record. The orders passed by the Trial Court appears to be keeping in view the law laid down by Hon'ble Supreme Court in ***Mir. Mohd. Omar's*** case (supra). Be that as it may, the Learned Judge has made observation in the impugned order that the application and order passed below the said application is required to be kept along with evidence. In that view of the matter no case is made out to entertain this application. However, Trial Court to consider the application and order passed below the said application at the time of considering evidence in its

entirety and while deciding the case pending before it. With the above observations, application stands rejected.

6. The observations made herein above are prima facie in nature and confined to the adjudication of the present application only.

[S.S. SHINDE, J.]