

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

CRIMINAL APPLICATION NO. 1510 OF 2018

Mrs. Sulbha Rtajendra Mahadik ...Applicant.

vs.

State of Maharashtra and anr. ...Respondent.

Mr. Raviraj Gamre I/by Manoj Mahadik for the Applicant.

Mr. H.J.Dedia, APP for the Respondent State.

Mr. Aniket Gawand for Respondent No.2.

CORAM : SMT. BHARATI DANGRE, J.

DATE : 9TH OCTOBER, 2019

PC :

1. The applicant is aggrieved by the order of rejection of the application preferred before the Metropolitan Magistrate, 5th Court, Dadar vide Exhibit-26 by which she sought permission to recall herself as witness for limited purpose for exhibiting the photographs and the compact disc. The said application came to be rejected by the Magistrate by recording that the matter is very old and the applicant had filed her affidavit in lieu of examination in chief on 7.12.2011 and

subsequent thereto she was subjected to cross examination. It is also recorded that the respondent was also examined and cross examined and the matter is fixed for arguments. On merits, the Magistrate dealt with the application filed by the applicant wife and recorded that no fruitful result would be achieved even if she is permitted to step into the witness box. The Additional Sessions Judge, Greater Mumbai in criminal revision filed by the wife also emphasised on the delay in proceedings and on the fact that the photographs and the CD do not pertain to the marriage of the parties themselves and particularly when the respondent admits the photographs in the cross examination but he has proceeded to deny the relationship either of marriage or in the nature of marriage as was sought to be put forth by the applicant.

2. With the assistance of the learned counsel for the parties I have perused the documents placed on record. In the application preferred by the wife on which impugned order has been passed, she has made reference to the affidavit filed by the husband and his cross examination where he did not dispute that he used to visit her family and actively participated in the marriage ceremony of the applicant's

daughter. In the light of this cross examination it is averred by her that her entire genesis for maintaining the claim under Domestic Violence Act, 2005, in the nature of marriage is focused on the said photographs. She has also admitted that there was a delay and according to me applicant wife can be discounted on the aspect of the legal advice tendered to her to which she has made a reference in her application.

3 Since the case of the applicant-wife is based on very nature of relationship which she shared with the respondent and the photographs which have been already brought on record along the list of documents produced on 7.12.2011, the applicant only sought permission from the court to re-enter the witness box to exhibit the said photographs, which are already placed on record.

4. In order to do complete justice Section 311 of the Code of Criminal Procedure confers power on the court, if it is of the opinion that at any stage of the enquiry, the trial or other proceeding under the Code any person need to be summoned as witness or has to be examined in attendance though not summoned as witness or to recall or re-examine any person already examined and this power can be exercised if it

appears to be essential to the just decision of the case.

In my considered view, this is one such case where exercise of power under Section 311 of the Code is justified. The applicant is seeking reentry in the witness box for the limited purpose of exhibiting documents and since whole of her case is based on establishing a domestic relationship contemplated under the Domestic Violence Act, 2005 and in my opinion this would render complete justice. However, at the same time, it is to be noted and not disputed by both the respective counsels that the matter is adjourned for arguments before the Metropolitan Magistrate. It is very apparent that the case is pending since 2010 and though I am inclined to afford an opportunity to the applicant to be reexamined, it is also cautioned that the said entire exercise should be completed by the Magistrate within one month from today. It is made clear that both the parties would appear before the Magistrate within three days from today and make an application for taking the case on board and the Magistrate within a period of 15 days after taking into consideration his schedule, list of cases/proceedings would permit reexamination of the applicant. It is

however, made clear that this should not in any case be carried beyond 8.11.2019.

5. With the aforesaid directions the application is made absolute in terms of prayer clause (a).

(SMT. BHARATI DANGRE, J.)