

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.743/2020**

**KIRIT VRAJLAL RADIA AND ANR. ... PETITIONERS.**

**VERSUS**

**THE STATE OF MAHARASHTRA ... RESPONDENTS.**

Mr.Ashok Kumar Dubey a/w Anil Pandey i/b Savi Law Solutions, for the Petitioner.

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

**CORAM : A. M. BADAR, J.**

**DATE : 12TH FEBRUARY 2020.**

**P.C.:**

1. Prayer made in this petition is to recall PW 1 Nasruddin Kasamali Gangani for cross examination.

2. Learned counsel for the petitioner argued that second application for recalling PW 1 Nasruddin Kasamali

Gangani was moved and it was rejected by the learned Additional Chief Metropolitan Magistrate, 19<sup>th</sup> Court, Esplanade, Mumbai. He argued that nothing was asked to this witness in the cross examination so far as role of present petitioners/accused nos.3 and 4 is concerned. Therefore, it is necessary to recall them. Learned counsel further argued that the petitioners are not involved in the crime in question and this aspect is to be brought on record from further cross examination.

3. It is submitted that during the course of examination-in-chief, PW 1 Nasruddin Kasamali Gangani had stated that document at Exhibit-P-30 bears signature of petitioner no.2. With these submissions, learned counsel for the petitioners submitted that PW 1 Nasruddin Kasamali Gangani needs to be recalled for further cross examination.

4. I have considered the submissions so advanced.

Trial against accused persons is proceeding before learned Additional Chief Metropolitan Magistrate, 19<sup>th</sup> Court, Esplanade, Mumbai and not before this Court. First application for recalling PW 1 Nasruddin Kasamali Gangani was moved before the learned Additional Chief Metropolitan Magistrate, 19<sup>th</sup> Court, Esplanade, Mumbai on 14.3.2019 and it was rejected by the said court on the very same day. Then second application for recalling the very same witness came to be moved on 17.1.2020 and it was again rejected by the learned Additional Chief Metropolitan Magistrate, 19<sup>th</sup> Court, Esplanade, Mumbai, on the very same day i.e. on 17.01.2020. This order is not sought to be quashed by making specific prayer in the prayer clause of the petition.

5. Be that as it may; second application for recalling PW 1 Nasruddin Gangani is with a reason that recall of this 71 years old First Informant is necessary for bringing important contradictions on record. It is specifically stated in the said

application that recall is not for any other point. During the entire argument before this court, nothing was pointed out as to what was the previous statement of PW 1 Nasruddin Gangani and what was sought to be put up to him for bringing the contradictions on record.

6. Learned trial Magistrate was very much aware of the fact that recall is necessary only when same is required for just decision of the case. With reasoned order, the learned trial Magistrate came to conclusion that recall of PW 1 Nasruddin Gangani is not necessary.

7. For the above stated reasons, no case for interference is made out. Hence, the petition is dismissed.

**(A. M. BADAR, J.)**

