

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.687 OF 2017

RAVI MOHANLAL BHALOTIA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ankul Seth i/b. Mr.M.V.Thorat, Advocate for the Applicant.

Mr.A.R.Patil, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 3rd JANUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 By this application, the applicant/accused is challenging the order dated 12th April 2017 thereby rejecting application under Section 311 of the Code of Criminal Procedure

(hereinafter referred to as Cr.P.C. for the sake of brevity) whereby he had requested for recalling PW2 Devendra Astekar, Deputy Executive Engineer, for further cross-examination.

3 Heard the learned counsel appearing for the applicant. He argued that in a prosecution under Section 135 and 138 of the Electricity Act, the learned counsel for the applicant/accused had not properly cross-examined PW2 Devendra Astekar, and therefore, for effective cross-examination of PW2 Devendra Astekar, the application came to be filed for recalling him. However, the learned trial court, without considering the scope of Section 311 of the Cr.P.C. had rejected the said application.

4 The learned APP opposed the application by contending that the application is filed for filling up the lacuna.

5 I have considered the submissions so advanced and also perused the impugned order. The application for recalling PW2 Devendra Astekar for further cross-examination came to be

rejected with a reason that merely because new advocate is engaged, the witness cannot be recalled to fill up the lacuna.

6 Perusal of the impugned order makes it clear that the learned trial court has failed to appreciate the scope of Section 311 of the Cr.P.C. while deciding the application for recall of PW2 Devendra Astekar for further cross-examination. The learned trial court ought to have examined whether further evidence of PW2 Devendra Astekar is essential for just decision of the case or not. Lacuna is inherent weakness either in prosecution case or defence. It cannot be equated with mishandling of the case by the advocates appearing for the parties. According to the learned counsel for the applicant, prosecution case is to the effect that because of the magnet attached to the meter, it was not reflecting correct reading. The learned counsel further submitted that the meter was a plastic meter and magnet has no effect on it and this aspect is not brought on record from cross-examination of PW2 Devendra Astekar, and therefore, prayer for recalling of that witness was made.

7 Be that as it may, as the impugned order nowhere contains a finding as to whether further evidence of PW2 Devendra Astekar is essential in just decision of the case or not, the same needs to be quashed and set aside. Therefore, the order :

ORDER

- i) The application is allowed.
- ii) The impugned order is quashed and set aside.
- iii) The application for recalling PW2 Devendra Astekar is remitted to the learned trial court for fresh decision.
- iv) Rule is made absolute in above terms.
- iv) The application stands disposed off.

(A. M. BADAR, J.)