

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

919 CRIMINAL WRIT PETITION NO.174 OF 2020

**SHAIKH MURTUJA SHAIKH MASOOD
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

...

Advocate for Petitioner : Mr.Khande Avinash A.
APP for Respondent No. 1-State : Mrs. R.P.Gaur
Advocate for Respondent No. 2 : Mr. R. B. Bhosale

...

CORAM : N.R. BORKAR , J.

DATE : 01st DECEMBER, 2021.

P. C. :

1. This petition takes an exception to the order dated 26.09.2018 passed by the learned Magistrate below Exh. 27 in SCC No. 334 of 2015.

2. The respondent No. 2 herein is an accused in the above said case & is facing trial for the offence punishable under Sections 304-A, 279, 337, 338 of the Indian Penal Code (for short "I.P.C.") and Section 137 and 177 of the Motor Vehicles Act.

3. The respondent No. 2 had moved an application for recalling witness Mr. Vhishal Wadekar. Said application came to be allowed by the order impugned.

4. I have heard the learned counsel for the petitioner and the learned A.P.P. for the Respondent No. 1-State.

5. I have perused the application filed by the respondent No. 2 at Exh. 27. The respondent No. 2 has stated that his lawyer got knowledge of certain facts which were not within his knowledge at the time of cross-examining the said witness Vishal Wadekar and therefore he be recalled for further cross-examination. The respondent No. 2 has not spelled out in his application which were those facts.

6. The learned trial Court while allowing the application has passed the following order :

“Perused say and application. Having considered the reason assigned in the application the witness is hereby recalled for cross-examination. Hence in the interest of justice application is allowed.”

7. The trial Court was not justified in allowing the application mechanically. The Court has to satisfy itself on the basis of reasons assigned by the party seeking recall of the witness, that the same is essential for the just decision of the case. The order impugned therefore cannot be sustained. The order impugned is set aside. However, the respondent No. 2 is permitted to file fresh application.

8. The petition is disposed of.

(N.R. BORKAR)
JUDGE

mahajansb/