

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 27 OF 2020

Savitri alias Sumitra Gouda

.....Petitioner

V/s.

The State of Maharashtra

.....Respondent

* * * *

Mr. Shantanu R. Phanse, Advocate for the Spetitioner.

Mr. Y.M. Nakhawa, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 12th October, 2021.

P.C.:

1. Heard.

2. This Writ Petition, under Article 227 of the Constitution of India, challenges the order dated 16th October, 2019 by which the Learned Metropolitan Magistrate, at the instance of accused, declined to recall two prosecution witnesses. P.W.1 is the complainant, and P.W. 2 is panch witnesses. Petitioner is facing prosecution for commission of offences under The Immoral Traffic (Prevention) Act, 1956 ("PITA Act" for short). In January, 2019, accused moved an application under Section 311 requesting to recall P.W.1 and 2 on the ground that, although witnesses were cross-examined at length, they were not confronted with the earlier prosecution launched against the applicant at the behest of P.W.1. The learned trial Court, rejected the application and hence this Writ Petition.

3. The learned Counsel for the petitioner, submitted that applicant-accused was convicted under the PITA Act in C.C. No.780/PW/2010 wherein P.W.1 was the complainant. It is submitted that, due to previous

enmity, the petitioner has been falsely implicated in the present case and therefore it is essential to cross-examine the complainant to bring on record the material, disclosing the enmity between the petitioner and the complainant (P.W.1). The scope and object of Section 311 Criminal Procedure Code, is to enable the Court to determine the truth and render a just decision. Obviously, recourse to Section 311 Criminal Procedure code cannot be taken to fill up a lacuna in the case of prosecution or the defence. Herein, two witnesses, one complainant (P.W.1) and another, panch (P.W.2), were cross-examined at length and at the material time, accused knew that his previous conviction, under the PITA Act, was at the instance of Prosecution Witness no.1 and Witness no.2, who was panch witness, therein. If inspite of knowing these facts, if witnesses were not cross-examined, on material points, evidently, witnesses cannot be recalled and permitted to re-cross them. In consequence for want of valid reasons, trial Court as correctly declined to exercise jurisdiction under Section

311 Criminal Procedure Code. Therefore, no interference is called for in the impugned order. Petition is dismissed.

(SANDEEP K. SHINDE, J.)

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