

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 297 OF 2020

Mr. Dharmesh M. Solanki & Anr.

.... Applicants.

Vs.

The State of Maharashtra

.... Respondent.

Mr. Khushnood Akhtar a/w Ms. Pinny Pathak i/b. Saeed Akhtar for the Applicants.

Smt. Rutuja Ambekar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 9th MARCH, 2021.

PC.:-

1. By the present Application under Section 482 of the Code of Criminal Procedure, the applicants have impugned Order dated 10th February 2020 passed below Exh.22 in C.C.No.791/PW/2011, thereby rejecting their Application under Section 311 of Cr.PC. for recalling of prosecution witness Nos.1, 2 and 3, for cross-examination.

2. Heard Mr. Akhtar, learned counsel for the applicants and Smt. Ambekar, learned A.P.P. for the respondent-State.

3. Learned counsel for the applicants submitted that, certain vital omissions were not brought on record by the earlier Advocate, which goes to the route of the matter. He submitted that, unless and until the said lacuna is filled in, it can not be said that, an opportunity of fair trial was

granted to the applicants. In support of his contention, he relied on the decisions of this Court in the case of *Pyarelal Lilaram Tagde Vs. State of Maharashtra through PSO PS Bela, Dist. Nagpur in Criminal Revision Application No.7 of 2019 (Nagpur Bench) decided on 27th June 2019* and *Waheguru Coal Private Limited and Ors. Vs. Shree Durga Iron and Steel Co. Ltd. and Ors., in Criminal Writ Petition No.5042 of 2019, decided on 14th October 2019*. He repeatedly and vociferously argued that, fair opportunity of trial 'must be' and 'should be' given to the applicants as after change of Advocate, the circumstances and scenario changes.

4. A bare perusal of evidence of PW Nos.1,2 and 3 in the said case would clearly reveals that, an Advocate was representing the applicants and he has at length and elaborately cross-examined the said witness. It further appears that, it is only after the change of Advocate, the present Advocate realized that, the case is proceeding towards conviction and as on after thought filed the said Application below Exh.22 for recalling of the said witnesses, only to fill up lacunas from the earlier cross-examination and nothing else. Undoubtedly, the law relating to recalling of witnesses under Section 311 of Cr.P.C. is well settled. It clearly appears to this Court that, no harm or legal prejudice would be caused to the applicant, if the said three witnesses are not recalled.

5. As noted earlier, ample and sufficient opportunity was granted by the learned Trial Court to the earlier Advocate on record to cross

examine the witnesses and in fact which he has done. It is the settled position of law that, change of Advocate does not constitute change in circumstance in the case and particularly to fill up lacunas in the evidence. The decisions cited by the learned counsel for the applicants therefore are of no avail to him, as they defer on facts.

6. After perusing the record, this Court is of the considered view that, the Trial Court has not committed any error while passing the impugned Order dated 10th February 2020 either in law or on facts.

Application being de hors of merits is accordingly dismissed in *limine*.

(A.S. GADKARI, J.)