

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.2960 OF 2021

Aasim @ China Yunus Shaikh

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Paras Yadav for the Petitioner

Mr. A. D. Kamkhedkar, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO CONFERENCING)
MONDAY, 23rd AUGUST 2021

P.C. :

1 Heard learned counsel for the petitioner and the learned A.P.P
for the respondent-State.

2 By this petition, the petitioner has impugned the order dated
16th March 2021 passed below Exhibit 86 by the learned Additional
Sessions Judge, Kolhapur in Sessions Case No. 138/2015. Learned counsel
for the petitioner submits that the learned trial Judge ought to have given an
opportunity to the petitioner to examine PW 1-Mahesh Shrikant Ingawale
(injured witness) on two grounds/aspects i.e. whether the injured had an

opportunity to see the assailant at the time of the incident and how the injured learnt that the nick name of the applicant was China. He submits that the intention of the applicant by filing an application seeking recall of PW 1 for cross-examination on these two aspects, does not tantamount to filling up the lacunae.

3 Learned A.P.P opposes the application.

4 Perused the papers including the impugned order dated 16th February 2021.

5 PW 1-Mahesh Ingawale is an injured witness. His evidence i.e. examination-in-chief and cross-examination was recorded sometime in March 2017. Thereafter, the prosecution examined as many as 13 witnesses and closed their evidence. Thereafter, statement of the petitioner was recorded under Section 313 Cr.P.C. During the course of recording 313 statement of the petitioner, the petitioner stated that he wanted to examine defence witnesses. It appears that when the case was fixed on Board for examining the defence witnesses, the petitioner, instead of examining the defence witnesses, filed an application (Exhibit 86) under Section 311 Cr.P.C for recalling PW 1-Mahesh Ingawale for conducting further cross-

examination. It is not in dispute that the evidence of PW 1 i.e. examination-in-chief as well as cross-examination was over in March 2017. After almost 4 years, after the statement of the petitioner was recorded under Section 313, the petitioner filed an application under Section 311 Cr.P.C for recalling PW 1-Mahesh Ingawale for conducting his further cross-examination on two aspects i.e. whether the injured i.e. PW 1 had an opportunity to see the assailant at the time of the incident and how PW 1 learnt that the nick name of the petitioner was China.

6 The learned Judge whilst rejecting the said application filed by the petitioner has observed that the intention of the petitioner appears to be to delay the trial and does not appear to be bonafide. It is also mentioned in the said order that another witness i.e. PW 3-Devendra was rendered hostile during the period of recording of his examination-in-chief and the cross-examination. Merely because the advocate for the petitioner had failed to ask a few questions, would not be a ground for recalling of a witness. A perusal of the evidence of PW 1-Mahesh Ingawale shows that he was cross-examined extensively. If permitted, it would open a plethora of applications under Section 311 Cr.P.C. This is certainly not the object of Section 311 Cr.P.C. Ultimately, every application has to be decided on its own merits, depending on the fact situation of that case.

7 Considering the aforesaid, no infirmity can be found in the impugned order. Accordingly, the application is dismissed.

8 The learned Judge to decide the case on its own merits, uninfluenced by the dismissal of this petition.

REVATI MOHITE DERE, J.