

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

CRIMINAL WRIT PETITION NO. 2962 OF 2021

Santosh Shamrao Ingulkar

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Vivek V. Salunke, for the Petitioner.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 24th AUGUST, 2021

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 30th March 2021, passed by the learned Additional Sessions Judge, Pune, below Exhibit – 72 in Sessions Case No.680 of 2015, by which, the learned Judge rejected the petitioner's application filed under Section 311 of the Code of Criminal Procedure, seeking recall of PW 1 (prosecutrix) for further cross-examination.
3. Learned Counsel for the petitioner submits that the trial Court ought to have entertained the petitioner's application for recall of PW 1 (prosecutrix) for the following reasons i.e. (i) there was change in the

2. By this petition, the petitioner has impugned the order dated 30th March 2021, passed by the learned Additional Sessions Judge, Pune, below Exhibit – 72 in Sessions Case No.680 of 2015, by which, the learned Judge rejected the petitioner's application filed under Section 311 of the Code of Criminal Procedure, seeking recall of PW 1 (prosecutrix) for further cross-examination.

3. Learned Counsel for the petitioner submits that the trial Court ought to have entertained the petitioner's application for recall of PW 1 (prosecutrix) for the following reasons i.e. (i) there was change in the

defence counsel representing the petitioner (ii) that detail cross-examination of PW 1 (prosecutrix) was not done and that the basic defence of the petitioner needs to be taken on record; (iii) that questions relating to omissions, improvements and contradictions are required to be asked and (iv) that the prosecutrix needs to be questioned with respect to the medical case papers placed on record through the evidence of PW 7 – Dr. Tejaswini Kale.

4. Learned APP opposes the petition. He submits that no interference is warranted in the impugned order. He submits that PW 1 (prosecutrix) was cross examined by the petitioner's advocate at length and that mere change of advocate cannot be a ground for entertaining such an application. Learned APP pointed out to the extensive cross-examination taken by the petitioner's advocate. He further submits that cross-examination of PW 1 (prosecutrix) is not necessary for proving the medical case papers.

5. Perused the papers. The petitioner is facing prosecution for the alleged offences punishable under Sections 376(2)(n), 354 and 506 of the Indian Penal Code. The prosecution in support of its case examined PW 1 (prosecutrix) and 6 other witnesses including PW 7 – Dr. Kale, the doctor

who examined the prosecutrix, who was present at the time of the medical examination of the PW 1 (prosecutrix). After PW 7's evidence was over, the petitioner filed an application under Section 311 Cr.PC and sought recall of PW 1 i.e. prosecutrix for further cross-examination. A perusal of the application filed under Section 311 Cr.PC, by the petitioner's advocate shows that recall of the witness i.e. PW 1 (prosecutrix) was sought on the ground that cross-examination of the said witness was limited and certain questions could not be asked; that detailed cross-examination of PW 1 (prosecutrix) was not done and that basic defence has not been put nor omissions, improvements and contradictions taken on record and that certain questions need to be asked on certain documents/medical case papers. A perusal of the evidence of PW 1 (prosecutrix) shows that she was cross-examined at length and therefore mere change of counsel would not be a ground to permit recall of the said witness. As far as medical case papers are concerned, it is not for the prosecutrix to comment on the said papers. The onus is on the concerned doctor who examined PW 1 (prosecutrix).

6. Thus, no infirmity can be found in the said order dated 30th March 2021, passed by the learned Additional Sessions Judge, Pune, below Exhibit – 72 in Sessions Case No.680 of 2015.

7. Accordingly, the petition is dismissed.

REVATI MOHITE DERE, J.