

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 1033 OF 2021

ATUL RAMA LOTE

) APPLICANT

V/S.

THE STATE OF MAHARASHTRA

AND ORS.

)RESPONDENT

* * * *

Ms. Rebecca Gonsalves i/by. Mr. Dr. Yug Mohit Chaudhry,
Advocate for the applicant.

Mr. A.R. Patil, APP for State.

Coram : Sandeep K. Shinde, J.

Wednesday, 1st December, 2021.

P.C. :

1. This application under Section 482 Criminal Procedure Code, impugns Clause-2 of the order dated 7th October, 2021 below Exhibit-17 passed by the learned Additional Sessions Judge-6, Thane in Special Case No.107/2014 by which the learned Sessions Judge, permitted to recall, the prosecution witnesses, for cross-examination, subject to Bhatta, quantified at Rs.1,000/- to be paid to each witness.

BACKGROUND FACTS :

2. Division Bench of this Court, in Confirmation Case No.5/2016 vide judgment dated 25th April 2019, quashed and set aside, the judgment dated 28th September 2016, convicting the accused and restored Special Case No.107/2014 to the file of the District Judge-8 & Special Judge (POCSO) for proceeding further from the stage of alteration of charge. As such, the accused moved an application below Exhibit-17 seeking to recall the prosecution witnesses for their cross-examination. In context of these facts, although the learned Judge granted the request to recall the witness, but made it subject to payment of Bhatta of Rs.1,000/- for each witness.

3. Ms. Gonsalves, learned Counsel for the applicant, would rely on the provisions of the Maharashtra Payment by Government of Expenses of Complainants and Witnesses (attending Criminal Courts) Rules, 1980 ("Rules of 1980" for short) to contend that, interms of these Rules, the Bhatta to be paid to the witnesses, is regulated by the Rules and therefore the

order directing the accused to pay Bhatta of Rs.1,000/- to each witness was against the law.

4. In consideration of the facts of the case and in view of the provisions of the Rules of 1980, Clause (2) of the order dated 7th October, 2021 below Exhibit-17 in Special case passed by the learned Additional Sessions Judge-6, Thane in Special Case No.107/2014, is quashed and set aside. In the result, Bhatta shall be paid to the witnesses in terms of the Rules of 1980.

5. Application is allowed and disposed of in the aforesaid terms.

(Sandeep K. Shinde, J.)