

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA  
CRIMINAL WRIT PETITION NO. 23 OF 2022**

Vinod Desai

... Petitioner

*Versus*

Mervin Fernandes

...Respondent

**Mr. R. J. Pinto**, *Advocate for the Petitioner.*

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**CORAM:**     **A. K. MENON, J**  
**DATED:**     **22<sup>nd</sup> March 2022**

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**P.C.**

**1.**     By this Writ Petition, the Petitioner seeks to quash and set aside the Order dated 03.01.2022, passed by the learned Judicial Magistrate First Class, Panaji, whereby an application under Section 311 of Cr.P.C. filed by the Petitioner, for recalling a witness for cross examination, was rejected.

**2.**     In the impugned Order, the learned Judge having heard the application, has found that the application was vague and an afterthought considering the fact that the only reason set out in the application did not merit the order recalling of the witness. The learned Counsel for the Petitioner has today contended that the learned Judge has made a serious error in not permitting recall of the

witness. He admits that there has been a change of Advocates and that the earlier Advocate for the Petitioner had allegedly not conducted the cross examination of the complainant in a proper manner.

3. During the hearing today, I had called upon the learned Counsel to point out the material particulars in the application which would justify recall of the witness and in this behalf, he has relied upon paragraphs 3, 4 and 13 of the application.

4. In my view, these paragraphs do not in any manner suggest that the cross examination of the complainant was in any manner deficient. The learned Judge has found that after the cross examination of the complainant was closed, three further witnesses have been examined.

5. On behalf of the Petitioner, the learned Counsel has relied upon the decision of the Supreme Court in the case of *Hoffman Andreas vs. Inspector of Customs, Amritsar*<sup>1</sup>. He invited my attention to paragraph 6, wherein the Court considered that a new Counsel had been engaged and that when the new Counsel took up the matter, he certainly could have been under the disadvantage that he could not

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<sup>1</sup> 2000 (10) SCC 430

ascertain from the erstwhile Counsel as to the scheme of the defence strategy which the predeceased advocate had in mind.

6. The facts in that case do not in any manner come to the assistance of the Petitioner in the present case and it is clearly distinguishable. The Counsel in that case had expired midway and before the trial concluded and that is what prompted the Supreme Court to allow recall of the witness. In the present case, the learned Judge has found that even after the four witnesses were examined by the complainant's Advocate, two further witnesses were cross examined on the part of the present Petitioner.

7. This Petition in my view does not merit consideration. I find no reason to interfere in the writ jurisdiction of this Court.

8. The Petition is dismissed. No costs.

**A. K. MENON, J**