

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.221 OF 2022**

Asif Liyakatali Siddique

..Applicant

Versus

State of Maharashtra

..Respondent

Mr. Ashraf Ali Akhtar Shaikh, Advocate for the Applicant.

Mr. H.J. Dedhia, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th JUNE, 2022.

PC.

1. The applicant challenges order dated 24th May, 2022 passed by learned Additional Sessions Judge, Pune below Exhibit-106 preferred by the applicant to recall prosecution witness No.2 and witness No.4 for further cross-examination under Section 311 of Cr.P.C.

2. The applicant is facing trial for the offences under Sections 363, 366, 376(2)(n) of Indian Penal Code (for short “IPC”) and Section 3 r/w Section 4 and Section 5 r/w 6 of Protection of Children from Sexual Offences Act, 2012.

3. The applicant preferred the application under Section 311 of Cr.P.C. for recall and re-examination of witnesses. It was contended that the case is due for Judgment. The arguments of both the sides

were heard. The evidence of PW-2 (victim girl) has been recorded. She is the important witness. There are contradictions in the statement of the victim girl recorded under Sections 161 and 162 of Cr.P.C. There are omissions and contradictions in her evidence. The said contradictions and omissions remained to be brought on record due to inadvertence. The portion of marked "A" to "F" were required to be marked and exhibited thorough Investigating Officer. Hence, PW-2 and PW-4 may be recalled by issuing summons to them.

4. The learned Additional Sessions Judge, Pune while rejecting the said application by order dated 24th May, 2022 had observed that the applicant in his application as well as argument failed to point out on which material omissions and contradictions, cross-examination of victim was left to be taken. The accused is reluctant to proceed with trial and conduct the case. When the accused has changed his advocate application was preferred and witnesses were recalled and they were cross-examined at length. Thereafter, again advocate was changed by the accused and he preferred the present application after the final arguments were heard and the case is posted for Judgment. The accused is facing the charge of rape. He is

a married person. It is not expected that victim girl and Investigation Officer should repeatedly come to the court for cross-examination. The accused wants to fill up lacuna in his defense. The application is filed to prolong the trial. No case is made out for recalling PW-2 and PW-4.

5. Learned advocate for the applicant submitted that the Trial Court has wrongly rejected the application for recall of witnesses. Power under Section 311 of Cr.P.C. can be exercised at any stage before the Judgment. Grave prejudice would be caused to the defense of the accused, if the witnesses are not recalled.

6. Learned APP submitted that no ground is made out to recall the witnesses. The Trial Court has rightly rejected the application. The evidence of all the witnesses was recorded, sufficient opportunity was given to the applicant. The case was due for Judgment. The application was preferred belatedly. The applicant/accused is prosecuted for the aforesaid offences. Arguments of both the sides were heard and the case was posted for Judgment.

7. PW-1 was examined on 12th August, 2016. Her evidence was concluded on 24th July, 2019. PW-2 (victim) was examined on 9th November, 2016. Application was preferred for recall of PW-2 and in view of order passed below Exhibit-57. The advocate for applicant did not appear although case was called repeatedly. Hence, no cross-examination was conducted. The accused in person declined cross-examination. Thereafter, cross-examination of PW-2 was conducted by the advocate for accused. It is apparent that the accused engaged new advocate for conducting cross-examination. The cross-examination was conducted in detail on 25th September, 2018, 27th March, 2019 and 24th July, 2019. Medical Officer (PW-3) was examined on 18th December, 2017. She was cross-examined on 24th July, 2019. PW-4 Savita Ghanwat, API was examined on 1st January, 2018. The cross-examination was declined. The advocate for accused was not present. Subsequently, on the application of the accused, PW-4 was recalled and cross-examined on 27th January, 2020. Thereafter, PW-5 was examined on 16th January, 2018. The accused declined cross-examination. Subsequently, witness was recalled and cross-examination was conducted by

advocate for accused on 30th December, 2019. The evidence of PW-6 was recorded on 8th February, 2018. The accused declined cross-examination. The witness was recalled for cross-examination and the advocate for the accused conducted cross-examination on 6th March, 2020. Thereafter, the accused examined defence witnesses DW-1 and DW-2 on 21st April, 2022 and 28th April, 2022. The statement of the accused was recorded under Section 313 of Cr.P.C. Arguments of both the sides were heard. The current application for recall was preferred on 23rd May, 2022.

8. The order dated 24th May, 2022 was passed by assigning reasons for rejection of the application for recall of witnesses. The application is vague, and the application was opposed by prosecution. The accused was already given an opportunity by recalling witnesses. Sufficient time was granted to the applicant to cross-examine the witnesses. The victim cannot be made to suffer by compelling her to attend the proceedings repeatedly by subjecting her to repeated cross-examination. No ground is made out to recall the witnesses. There is no infirmity in the order passed by the Trial Court rejecting the application for recall of witnesses.

9. Hence, I pass the following order:-

ORDER

- i. Criminal Revision Application No. 221 of 2022 is rejected.

(PRAKASH D. NAIK, J.)