

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

CRIMINAL APPLICATION NO. 716 OF 2022

Shree Radhey Trading Co.
Through Ramesh Satpal Nagpal
Versus
The State Of Maharashtra And Anr.

...Applicant
...Respondents

....

Mr. Satyavrat Joshi a/w Saumitra Salunke i/by P.R. Yadav, Advocate for
the Applicant

Mr. Yashpal Thakur a/w Javed Dhorajiwala, Muddassar Bagadia,
Nimeet Sharma i/by MZM Legal, Advocate for the Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 4th AUGUST, 2022.

PER COURT:

1. The applicant is original accused in C.C. No. 9360/SS/2016 filed by Respondent No.2 under Section 138 of Negotiable Instruments Act.
2. The complaint is pending before the Court of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai.
3. According to the applicant application for adjournment was preferred on 4th May, 2022 for adjournment on medical ground. On behalf of applicant application for exemption was filed before the trial Court. Application for exemption was allowed. The request of adjournment was rejected. Respondent No.2 filed application for

closing defence evidence. The said application was allowed and the case was adjourned to 21st May, 2022. Thereafter, it was adjourned to 14th July, 2022. the applicant preferred an application under Section 311 of Cr.P.C. For recall of witness under Section 311 Cr.P.C. by allowing the recall of defence witness Ramesh Satpal Nagpal for the purpose of examination as defence witness. The application was opposed by Respondent No.2 by filling reply. By order dated 16th July, 2022, the trial Court rejected the application for recall of witness.

4. The revision application preferred by application was rejected by order dated 29th July, 2022 on the ground that it is not maintainable as the impugned order was interlocutory.

5. Learned Advocate for the applicant submitted that the applicant may be allowed to examine him as defence witness. In the event the accused is not permitted to lead defence evidence, grave prejudice to cause his defence.

6. Learned Advocate for the Respondent / complainant submitted that sufficient time was granted to the defence to examine witness and the trial Court was constrained to pass order closing defence evidence. The accused are delaying the proceedings.

7. Learned Advocate for the applicant on instructions submitted that the applicant Ramesh Satpal Nagpal would remain present before the trial Court on 10th August, 2022 and examine himself as defence witness. No other witness would be examined by him as defence witness. Statement is accepted.

8. The trial Court shall proceed with recording the evidence of defence witness and the complainant may be permitted to the cross-examine the defence witness. The defence witness shall remain present before the trial Court for examining himself as defence witness on 10th August, 2022. No further time will be granted to the accused for examining defence witness.

9. In the light of the aforesaid directions, the order dated 16th July, 2022, rejecting the application for recall of witness and the order dated 29th July, 2022 passed by the Sessions Court dismissing revision application are set aside.

10. Application is disposed of.

(PRAKASH D. NAIK, J.)