

VRJ

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

**CRIMINAL REVISION APPLICATION NO.408 OF 2022**

Dharmesh Vador & Ors.

... Applicants

**V/s.**

The State of Maharashtra & Anr.

... Respondents

Mr. Amis Arsiwala i/by Nikhil Mengde a/w Mr. Pranay Dave & Piyush Deshpande for the applicants.

Mr. A.D. Kamkhedkar, APP for the respondent No.1/State.

Mr. Suresh Kumar for the respondent No.2.

**CORAM : AMIT BORKAR, J.**

**DATED : NOVEMBER 23, 2022**

**P.C.:**

**1.** By the impugned order dated 11<sup>th</sup> April, 2022 learned Additional Chief Metropolitan Magistrate, 38<sup>th</sup> Court, Ballard, Pier, Mumbai has allowed the application dated 5<sup>th</sup> March, 2021 treating it as an application under section 311 of the Code of Criminal Procedure.

**2.** The impugned order starts with the presumption that the application dated 5<sup>th</sup> March, 2022 is an application for re-examination of witnesses. On perusal of the application at page 338 of the present Criminal Revision Application, it appears that the said application was filed for the purpose of production of documents in the nature of certified copies of documents

mentioned in the application. The exercise of power under section 311 of the Code of Criminal Procedure must be caution and circumspection. Ingredients of section 311 are made out by the applicant. Unless there is satisfaction that the case is made out by the litigant satisfying failure of justice, the exercise of power under the said provision is not permissible.

**3.** In the application for production of documents, the prosecution has not made out a case for allowing the prosecution to recall the witnesses in exercise of power under section 311 of the Code of Criminal Procedure.

**4.** In that view of the matter, following order:

- a. The impugned order dated 11<sup>th</sup> April 2022 is quashed and set aside.
- b. However, the prosecution will be at liberty to file an application under section 311 of the Code of Criminal Procedure, which if filed, shall be decided by the learned Magistrate in accordance with law.

**5.** The revision application stands disposed of in the above terms. No Costs.

**(AMIT BORKAR, J.)**