

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 605/2022.

Dinesh @ Gogo Chintaman Shahu.

-Versus-

State of Maharashtra.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.A.S. Mishrikotkar, Advocate for the Petitioner.
Mr.S.M. Ukey, Addl.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 20, 2022.

Criminal Application (APPW) No.166/2022.

The applicant/petitioner seeks to amend the petition for including a prayer for quashing of the order dated 08.07.2022, whereby the trial Court has declined to recall the witness.

2. Having regard to the nature of the petition, prayer is quite essential, and hence, application is allowed. Applicant is directed to carry out necessary amendment forthwith. Criminal Application No.166/2022 is accordingly allowed.

.....

Criminal Writ Petition No.605/2022.

Heard.

2. The petitioner who is accused no.2 in Sessions Case No.162/2019, seeks to challenge the order of rejection to recall witness and further prayed to allow him to cross examine the prosecution witness no.1 namely Sarita Shahu, who is the informant.

3. It is submitted that the earlier counsel engaged by the petitioner has not properly cross-examined the witness, as well as the material circumstances were not put to the witnesses during cross examination, and thus, as a part of fair trial, he be permitted to cross-examine P.W.1 by way of recall.

4. The learned A.P.P. resisted the petition by contending that there is no propriety in recalling of the witness at the fag end of the trial.

5. It is informed that the prosecution has led evidence of total 7 witnesses, followed by recording of statement of the accused in terms of Section 313 of the Code, and now the matter is fixed for final arguments. Recall is sought of P.W.1, whose evidence was recorded on 08.04.2022. The main ground is that the earlier counsel has not elaborately cross-examined P.W.1 by putting certain circumstances to the witness.

6. Record indicates that the petitioner/accused has

changed his counsel somewhere after the evidence of P.W.2, and thus, the remaining witnesses i.e. P.W.Nos. 3 to 7 have been cross-examined by the new counsel. The said fact itself indicates that the new counsel was well aware about the evidence of P.W.1 and his cross-examination by the earlier counsel. Till the fag end of the trial no application for recall is filed. The situation emerges that the evidence of all the witness is complete. Now the accused cannot be permitted to examine the original complainant whose evidence was recorded long back, as well as she was already cross-examined. The power to recall has to be exercised in cases where the Court finds that the evidence of such witness is essential for just decision of the case.

7. Pertinent to not that while seeking recall, may be after evidence of all witnesses, the petitioner has not assigned a single reason as to why the witness is to be recalled. Rather accused forgot the position of law that, it is not his absolute right to recall the witness, but, he has to satisfy the Court as to why recall is necessary. The petitioner fails to make out grounds for recall the witness. Having regard to above facts, the writ petition derives no merit. The same is dismissed.

JUDGE.