

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

989 CRIMINAL WRIT PETITION NO.866 OF 2023

LAXMIKANT @ ATUL S/O BHASKAR THAKUR
VERSUS
DATTATRAYA S/O VISHWANATH MULEY

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Advocate for Petitioner : Mr. Rahul P. Dhase
Advocate for Respondent : Mr. S.N. Pathan

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CORAM : R. M. JOSHI, J.
DATE : 7th JULY, 2023

PER COURT :

. This petition takes exception to the order dated 27.04.2023 passed by the Judicial Magistrate First Class, Aurangabad in SCC No.9322 of 2016 whereby application filed on behalf of accused under Section 311 of Code of Criminal Procedure to be recalled complainant (CW-1) for further cross-examination is rejected.

2. Learned counsel for petitioner states that there is specific contention raised in this petition to the effect that after the cross-examination of complainant was completed on 17.01.2023 wherein complainant has stated that the income of his wife is also one of the source of income. It is contended that wife of complainant is staying

separately since the year 2014 and hence this is relevant fact which requires to be confronted to complainant by way of further cross- examination.

3. Learned counsel for complainant states that accused has already cross-examined complainant, who had filed his affidavit of evidence on 13.11.2016. According to him, accused cannot be permitted to ask questions which may disrepute complainant.

4. There is no dispute about the fact that though affidavit of evidence was filed on 13.11.2016, complainant has produced documents and got them exhibited on 10.11.2022. It cannot be said that there is any delay on the part of accused in protracting trial. As far as contention of petitioner about he having received the information which is connected with the case after the conclusion of cross-examination, it is open for accused to cross-examine complainant on such aspect. Needless to say that Court is competent enough to ensure that no derogatory questions are asked in the cross-examination to any party.

5. Section 311 of Cr.P.C. empowers the Court to recall the witness in appropriate cases and having regard to the stand taken by petitioner about receiving information subsequent to the closing of cross-examination of complainant, this is fit case to allow accused to cross-examine the complainant. However, to ensure that the proceedings are not delayed further, complainant is directed to appear before J.M.F.C. on 21.07.2023. Accused or his learned Counsel to complete cross-examination of complainant on the very same day. It is clarified that no further time would be given to accused for conducting cross-examination of complainant.

6. In view of above, the writ petition stands disposed of.

[R. M. JOSHI]
JUDGE

GGP