

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

CRIMINAL WRIT PETITION NO.119 OF 2022

Halima Shaikh

..... Petitioner

Versus

The State of Maharashtra
and another

.... Respondents

Ms. Shabana Syed, Advocate for the Petitioner.

Ms. M.R. Tidke, APP for the Respondent-State.

Mr. Satishkumar R. Soni, Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th AUGUST, 2023

P.C. :

1. The Petitioner is the original accused in SCC No.1108263/2015 on the file of the 7th Judicial Magistrate, First Class, Vashi. During the trial, the complainant and one more witness was examined. The Applicant, who is the accused, made an application below Exhibit-53 for recalling of the complainant under Section 311 of Cr.PC. for cross-examination. That application was rejected and, therefore, this Petition is filed challenging that order.

2. Learned counsel for the Petitioner submitted that the Petitioner is suffering from mental issues and, therefore, she could not give proper instructions to her Advocate and her Advocate could not cross-examine the complainant effectively. She submitted that in the interest of justice the Petitioner be given a chance to cross-examine the complainant.

3. Learned counsel for the original complainant-Respondent No.2 herein submitted that the Petitioner, by one way or the other, is trying to prolong the trial. The trial is pending since 2015 and because of these tactics it has not reached its conclusion. He submitted that sufficient opportunity was given to the Petitioner to conduct the cross-examination. He further submitted that inspite of all this, he has no objection if the cross-examination of the complainant is conducted on the next date of listing and it is completed within a day. He submits that he is giving this concession to avoid the delay in conduct of the trial.

4. The stand taken by learned counsel for the

Respondent No.2 is very fair. Based on this concession, the Petitioner can be permitted to cross-examine the complainant.

5. Learned counsel for the Petitioner undertakes that the cross-examination of the complainant would be completed within one day.

6. Considering the statements made by both learned counsel, following order is passed :

:: O R D E R ::

- i. The order dated 21.10.2021 passed by the 7th Judicial Magistrate, First Class, Vashi below Exhibit-53 in SCC No.1108263/2015 is set aside. It is made clear that amongst the witnesses who were examined, only the complainant shall be cross-examined further.
- ii. Both the parties shall appear before the learned Magistrate on 8.9.2023, which is the scheduled date. On that day, the complainant shall remain

present for further cross-examination and on that very day the learned counsel for the Petitioner shall complete the further cross-examination.

iii. The trial is expedited and the learned Magistrate is requested to complete the trial on or before 30.11.2023.

iv. With these directions, the Petition is disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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