

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

CRIMINAL WRIT PETITION NO.1085 OF 2023

Saurabh Bankimchandra Dani

.....Petitioner

Versus

State of Maharashtra

and another

.... Respondents

Mr. Niranjan Mundargi, Advocate i/b. Keral Mehta, for the
Petitioner.

Mr. N.B. Patil, APP for the Respondent No.1-State.

Ms. Priyanka Vilas Pandit, Advocate i/b. Siddharth Shenoy,
for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 06th JUNE, 2023

P.C. :

1. The Petitioner has challenged the order dated 17.2.2023 passed by the Metropolitan Magistrate, 59th Court, Kurla, Mumbai below Exhibit-38 in C.C. No.1251/SS/2017. Vide the application under Exhibit-38, the Petitioner, who is the original accused in C.C. No.1251/SS/2017 before the same Court, had prayed for recalling of PW-1 i.e. the original complainant and the Respondent No.2 herein. Said application was rejected and said order is under challenge in

this Writ Petition.

2. Heard Shri Niranjana Mundargi, learned counsel for the Petitioner, Shri N.B. Patil, learned APP for the Respondent No.1-State and Ms. Priyanka Pandit, learned counsel for the Respondent No.2.

3. Learned counsel for the Petitioner had tendered the affidavit of evidence including the cross-examination of PW-1. It is taken on record and marked 'X' for identification. Learned counsel for the Respondent No.2 has filed her reply which is also taken on record. In that reply, the cross-examination of PW-1 is included.

4. Learned counsel for the Petitioner submitted that in the interest of justice and for just decision of the case recalling of PW-1 for further cross-examination was necessary. He submitted that no prejudice would be caused if the Respondent No.1 was subjected to further cross-examination. He further submitted that this attempt was not to fill up the lacuna in the evidence which could be in favour

of the defence.

5. Learned counsel for the Respondent No.2 submitted that as of today the statement of the Petitioner-accused is also recorded under Section 313 of Cr.PC. The Petitioner still has an opportunity to step into the witness box and examine himself or his other witness to rebut the presumption against him. She further submitted that said application was filed only to delay the decision of the case, which amounts to abuse of process of law.

6. I have considered these submissions. I have perused the application filed vide Exhibit-38 in the said case and the impugned order. As rightly observed by the learned Magistrate, the cross-examination of the Respondent No.2 herein was completed on 21.9.2022 and the application for recall was made on 3.2.2023. He has observed that a vague ground was raised by the accused and nothing was disclosed by him in the application. He has not specified the questions which remained to be put to the complainant.

7. The observations of the learned Magistrate are absolutely correct. The application under Exhibit-38 is devoid of any such specifications. No details are given. No reasons are given as to what questions were left to be asked and as to why they were not asked. As rightly submitted by learned counsel for the Respondent No.2, there are no new circumstances which came into existence which necessitated recalling of the Respondent No.2 for subjecting him to further cross-examination.

8. Considering all these aspects, I do not find any infirmity in the impugned order. The Petition, therefore, is dismissed.

(SARANG V. KOTWAL, J.)