

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

CRIMINAL APPLICATION NO. 395 OF 2023

Nikhil Banda Hatalge	...Applicant
Versus	
The State Of Maharashtra	...Respondent

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Mr. Kedar Patil, Advocate for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th JUNE 2023

PC :

1. The applicant is prosecuted for offence under Section 376 of IPC. The prosecution has so far examined 8 witnesses. The applicant preferred an application for recall of PW-2 (victim) on 7th December 2022 on the ground that, there are certain improvements in her evidence. The said application has been rejected vide order dated 1st March 2023.

2. The applicant had preferred another application vide Exhibit-68 for de-exhibiting certain documents brought on record through the evidence of PW-7 Ananda Arvind Koshti. The said application was rejected vide order dated 1st March 2023.

3. While rejecting the application for recall of witness under Section 311 of Cr.P.C., the learned Sessions Judge has observed that sufficient opportunity was available to the applicant to cross examine PW-2.

4. Learned Advocate for the applicant however submitted that, in view of the fact that PW-5 has brought on record certain documents, the applicant needs to further cross-examine PW-2 by recalling her. However, this ground was not urged in the application for recall of witness preferred before the trial Court.

5. Learned Advocate for applicant submitted that, he would not press this application qua challenge to impugned order dated 1st March 2023 however, liberty may be granted to the applicant to move a fresh application for recalling PW-2 in view of the evidence of PW-5.

6. Learned APP submitted that the applicant ought to have preferred such application before the trial Court. As far as impugned order is concerned, there is no infirmity in the said order.

7. Considering the factual matrix as stated hereinabove, this application is allowed to be withdrawn with liberty to the applicant to prefer fresh application under Section 311 of Cr.P.C.

for recalling PW-2 (victim) in the light of evidence of PW-5. In the event such application is preferred before trial Court, the same shall be decided on merits and in accordance with law.

8. It is clarified that this Court has not expressed any view on the merits of such proposed application.

9. Application stands disposed off.

(PRAKASH D. NAIK, J.)