

GRM

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

CRIMINAL WRIT PETITION NO. 1363 OF 2018

The State of Maharashtra ... Petitioner

V/s.

Mahesh Dyneshwar Girme ... Respondent

Mr. A. R. Patil, APP for the State/Petitioner.

Mansha Khemka a/w Bhagyashree Upadhyay-Tiwari, Twinkle Khemka & Isha Saglani i/b Khmka & Associates, Adv. for the Respondent.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 2, 2023

P.C. :

Heard.

2. The challenge in this writ petition is to the order refusing to allow the prosecution to recall the informant/complainant to be examined as a witness.

3. It is a case under Prevention of Corruption Act, 1988 (for short "**PC Act**"). It is true that the informant/complainant was first examined on 07/12/2014. Thereafter he did not appear before the Court under one or the other pretext, particularly on the ground of ill-health. The Trial Court found the reasons given by the prosecution were not supported by the documentary evidence.

4. Learned Advocate for the respondent/accused has strong

reservation to allow this petition.

5. The prosecution's case is of demand and acceptance of the illegal gratification. The fate of the case is therefore necessarily depending on the evidence of informant/complainant. True, he was examined way back in December 2014. He thereafter did not appear before the Trial Court simply on the medical reasons. In the interest of justice, the prosecution is permitted to examine him as a witness.

6. The next date before Trial Court is of 08/03/2023. The learned APP makes a statement that on that day the informant in any case would be examined in examination-in-chief, except in unavoidable circumstances.

7. In view of the aforesaid statement, the petition is allowed. The order impugned herein is therefore set aside. The application to recall the informant/complainant is allowed. The Trial Court shall record the evidence of informant/complainant on the next date.

(R. G. AVACHAT, J.)