

WRIT PETITION NO.1272 OF 2023

Mohd. Shariq Mohd. Shafi Qureshi ... Petitioner
V/s.
The State of Maharashtra ... Respondent

Mr. R.K. Mendedkar with K. Gaikwad for the petitioner.

Ms. M.R. Tidke, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 10, 2023

P.C.:

1. Leave to amend. Amendment to be carried out forthwith.
2. The petition is directed against the order of rejection of application under section 311 of the code of Criminal Procedure, 1973 to cross examine PW-4.
3. The petitioner is accused for offences punishable under sections 353, 323, 504 of the Indian Penal Code, 1860. During the course of trial, prosecution examined PW-4. As the advocate for the accused was unable to cross-examine PW-4, the Trial Court passed no-cross orders against the accused. On immediate next date, the petitioner filed an application under section 311 of the Code of Criminal Procedure for recall of witness which has been rejected by impugned order.

4. While considering the application under section 311 of the Code of Criminal Procedure, the Court needs to arrive satisfaction as to whether such examination is necessary to arrive at just decision in the trial. The said issue is no longer res integra in view of judgment of Apex Court in the case of **Rajaram Prasad Yadav vs. State Of Bihar And Another**, reported in (2013) 14 SCC 461.

5. On perusal of the Roznama and the impugned order, it appears that on the earlier date the advocate could not examine PW-4 and on the next date he filed an application under section 311 of the Code of Criminal Procedure, is in the facts of the case sufficient to allow such application as the cross-examination of PW-4 is necessary to arrive at just decision in a case. Ultimately, it is the duty of the Court to provide fair trial to the accused. The application filed was bona fide in the facts of the case. Therefore, the impugned order cannot be sustained.

6. The rule is, therefore, made absolute in terms of prayer clause (a).

(AMIT BORKAR, J.)