

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

CRIMINAL WRIT PETITION NO.1622 OF 2019

Sanjay Kisan Shelar & Anr.

.... Petitioners

versus

The State of Maharashtra

.... Respondents

.....

- Mr. K. M. Tripathi, Advocate for Petitioners.
- Mr. Arfan Sait, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd OCTOBER, 2023

P.C. :

1. The Petitioners are the original accused Nos.1 and 2 in CC No.878/PW/2008 before the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. The matter is at the stage of final arguments. At this stage, the Applicants had preferred an application below Ex.35 for recalling of two witnesses for cross-examination. That application was rejected and therefore this Petition is filed challenging that particular order.

2. The prosecution case is that on 26/03/2007 on prior information the police party arranged to conduct a raid at Goregaon (E), Mumbai. Two accused came there and they were caught on the spot. It is the prosecution case that firearms and cartridges were recovered from them. On this basis, the FIR was lodged and the investigation was carried out. The trial proceeded.
3. Learned counsel for the Petitioners submitted that the prosecution examined five witnesses. The Applicants wanted to recall P.W.3 Nitin Alankure, who was the PI. attached to Khar police station and P.W.4 Vikas Gite, who was attached to Forensic Lab, Kalina for further cross-examination. This application was made below Ex.35. It was mentioned in the application that P.W.3 was a crucial witness, but he was not cross-examined by the earlier advocate in respect of spot of the incident and P.W.4 was not cross-examined regarding working condition of the alleged weapons. Learned Trial Judge observed that both these witnesses were cross-examined by both the accused at length.

The opportunity was already given. Change of advocate cannot be a ground to allow the cross-examination of the witnesses.

4. Learned counsel for the Petitioners submitted that the advocate who conducted cross-examination, was not sufficiently experienced and he did not ask crucial questions. The present advocate, who is conducting the trial, was engaged subsequently and he realized that certain questions needed to be asked and therefore he preferred that application. He submitted that in the interest of justice these two witnesses be recalled.

5. Learned APP strongly opposed this application. He submitted that the learned Trial Judge has rightly observed that change of advocate cannot be a ground for recalling of the witness. It is not that opportunity was denied to the accused to conduct the cross-examination. Quality of cross-examination cannot be a ground for recalling of the witness.

6. I have considered these submissions. P.W.3 was

examined in March 2013. His cross-examination was conducted on 15/06/2015. P.W.4 was examined on 20/07/2015. Sufficient opportunity was given to the accused to cross-examine these witnesses and they were in fact cross-examined by their advocate. After that, this application for recalling the witness was made on 23/01/2018 i.e. almost after three years. This application was made after the advocate was changed and it was rejected.

7. As rightly held by the learned Judge, the change of an advocate cannot be a reason for recalling the witness. The learned APP has rightly pointed out that both these witnesses were cross-examined and opportunity was not denied to them. The matter was fixed for final hearing. At this belated stage, after all these years, it is not proper to permit recalling of the witnesses. As pointed out earlier, both these witnesses were cross-examined and the last date of cross-examination of P.W.4 was 20/07/2015. The application for recalling the witnesses were made after more than two and half years. As of today more

than 8 years have passed. The application for recalling witness was made much belatedly. The matter is fixed for final arguments. Both these witnesses were cross-examined by the advocate of the Applicant. Sufficient opportunity was given to the Applicants to conduct the cross-examination.

8. In this view of the matter, it will not be proper to recall these witnesses. The incident is dated 25/04/2007. Therefore, already the trial is belated. It cannot be permitted to be delayed further. I do not find any reason to set aside the impugned order. The Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)