

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

CRIMINAL APPLICATION NO.454 OF 2023

Darshika Rashmin More ...Applicant
Versus
The State of Maharashtra & Anr ...Respondents

Mr. Ketan Dabke, Advocate, for Applicant.
Mr. N.B. Patil, APP, for State/Respondent.
Mr. Jugal Kanani, Advocate, for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 7th AUGUST 2023**

PC :

1. Heard learned Counsel Mr. Ketan Dabke for the Applicant, Mr. Jugal Kanani for the Respondent No.2 and Mr. N.B. Patil, APP for the State.

2. This Application challenges the order dated 21st March 2022, passed in C.C. No.2134/SS/2015 passed by the Metropolitan Magistrate 72nd Court, Vikhroli, Mumbai on 23rd March 2023. By the impugned order, the learned Magistrate passed an order below Exhibit 71, rejecting the Application preferred by the Applicant under Section 311 of Criminal

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Procedure Code (for short “Cr.PC.”) for recalling the complainant for cross-examination.

3. The Complainant had tendered his evidence as examination-in-chief. It was the turn of the Applicant to conduct cross-examination. On 21st March 2022 the learned trial Judge passed the following order:

“Accused present. Her advocate on record absent. Application for adjournment on behalf of accused rejected. The accused is not ready to cross. Hence, ‘no cross’.”

4. The Applicant thereafter preferred an Application dated 20th August 2022 for recalling the Complainant under Section 311 of Cr.P.C. and for permission to the Applicant to cross-examine the Complainant in the interest of justice. The said Application was rejected by the impugned order.

5. Learned Counsel for the Applicant submitted that on 21st March 2022, the Applicant/Accused had made an Application for adjournment because the Applicant’s Advocate was not well. He was suffering from viral fever and cold. The medical certificate

in that behalf was attached to that Application. However, the adjournment was refused and 'no cross-examination' order came to be passed. Learned Counsel for the Applicant submitted that in the interest of justice, in the aforesaid circumstances, the Accused/Applicant deserves a fair chance to conduct the cross-examination of the Complainant.

6. The learned Counsel for the Respondent No.2 i.e., for the original Complainant submits that the trial is pending since 2015. The Applicant had sufficient opportunity to cross-examine the Complainant but he did not avail of the same. He was delaying the trial and therefore, the relief may not be granted to him.

7. I have considered this submission. I have perused the impugned order. The learned Magistrate has observed that the Application for recalling the witness was not tenable as it amounted to reviewing his own order. Based on this reason, the Application for recalling the Complainant for cross-examination was rejected.

8. From the record, it can be seen that, on 21st March 2022 the Application for adjournment was made accompanied by the medical certificate in respect of the illness of the Advocate for the Applicant. Therefore, on that date, there was a valid reason for seeking adjournment. The Applicant would not be in a position to conduct cross-examination in the absence of her Advocate. In the interest of justice it is necessary that the Applicant is given fair opportunity to cross-examine the Complainant. The trial is pending since 2015 and, therefore, it is also necessary to direct the learned Magistrate to conclude the trial in a time bound manner.

9. In my opinion, the permission can be granted to the Applicant to conduct cross-examination on payment of cost of Rs.5,000/- to the Complainant.

10. Hence, the following order:

ORDER

- i) The order dated 23rd March 2023 passed below Exhibit 71 in C.C. No.2134/SS/2015 by the Metropolitan Magistrate 72nd Court, Vikhroli,

Mumbai, is set aside. The Complainant i.e., the Respondent Nos.2 herein shall be recalled for cross-examination on behalf of the Accused-Applicant herein, subject to the Applicant paying cost of Rs.5,000/- directly to the Respondent No.2 and submitting a proof of such payment.

- ii) The Applicant-Accused is permitted to conduct cross-examination of the Complainant. The learned Magistrate is directed to complete the proceedings of the said trial within a period of six months from today.
- iii) With these observations, the Application is disposed of.

(SARANG V. KOTWAL, J.)