

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

Criminal Writ Petition No.2767 of 2016

Ramkrishna Shivram Pandey

Aged 34 years, Occ: Service

R/at :-

Room No.298, 1/B, Society No.3,
Abhilakh Nagar, Laljipada, Iraniwadi
Road No.4, Near Shankar Mandir,
Kandivali (West), Mumbai-400 067

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.... Petitioner

Vs.

The State of Maharashtra

(At Instance of Kandivali Police

Station Vide C C. No 4501/PW/2008

(Old Case No. 182/P/97) in

CR.No.449 of 1997

.... Respondent.

Mr Laxmikant M Shukla a/w Ms Arti Dharmsey, Advocate for
petitioner.

Ms S.D. Shinde, APP for State/respondent.

Coram: R.N.Laddha, J.

Date : 23 October 2023

P.C.:

By this writ petition, the petitioner (original accused) has
challenged the order below Exh.14 dated 14.6.2016 passed by the
learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai,

(hereinafter referred to as 'the Magistrate'), in C.C.No. 4501/PW/2008.

2. By the impugned order, the Magistrate rejected the application (Exh.14) filed on behalf of the petitioner under Section 311 of the Code of Criminal Procedure, 1973 ('CrPC' for short), seeking to recall the prosecution witness/first informant, Mahavir Shivprasad Yadav (PW1), for further cross-examination. The said application was filed in the backdrop that on 3.12.2014, while recording the cross-examination of the first informant (PW 1) the documents, though filed, remained to be confronted to this witness. The request was, however, rejected by the learned Magistrate.

3. The learned Counsel for the petitioner submitted that after recording evidence of the first informant on 3.12.2014, only two witnesses were examined till date. It was submitted that the Magistrate was not justified in taking such a harsh view in the matter and that if the impugned order is not recalled, the petitioner will suffer grave prejudice.

4. On the other hand, Ms S.D.Shinde, the APP appearing for the respondent/State, opposed the petition and, relying upon the reasons recorded in the impugned order, submitted that the petition is devoid of any merit and is an attempt to prolong the

matter. Moreover, there is an unexplained delay in filing the application. It was submitted that the Magistrate was justified in passing the impugned order as no ground was made out for recalling the first informant for cross-examination. It was submitted that by filing the application (Exh.14), the petitioner made an attempt to put the first informant to unnecessary inconvenience.

5. By an order dated 14.6.2016, the Magistrate refused to accept the contention raised on behalf of the petitioner/accused and dismissed the application. Aggrieved by the said order, the petitioner approached this Court under Section 482 of CrPC.

6. This Court has carefully considered the submissions made at the Bar and perused the records.

7. The material on record shows that the petitioner has filed certified copies of three documents. Documents Exh.8 and 9 are the N.C.complaints and their acknowledgement, while Exh.10 is the certified copy of the documents in S.C.Suit No.1620/1995. In the cross-examination of the first informant, a reference to these documents is found. According to the learned Magistrate, the petitioner had adopted a lethargic approach in filing the application. After about 11 months of passing the order, the petitioner/accused realised that they had not confronted the

documents during cross-examination, and by filing the application (Exh.14), the petitioner attempted to fill the lacuna.

8. This Court is of the opinion that in the interest of justice, an opportunity can be granted to the petitioner to further cross-examine the first informant to the extent of confronting the documents as mentioned in the petition. The search for truth is the ultimate and idealistic end of all litigated matters in a Court of trial. The fact remains that there is a reference to the documents in the cross-examination, but as the documents were not confronted, the application (Exh.14) was filed. The reference to those documents is found in the cross-examination of the first informant. Under these peculiar facts of the instant case, the prayer to recall the first informant for further cross examination u/s 311 Cr PC is justified. It is a settled position in law that there may not be the failure of justice on account of the mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the evidence of the witnesses examined from either side. No prejudice will be caused to the prosecution by recalling this witness.

9. Consequently, the application filed on behalf of the petitioner at Exh.14 u/s 311 CrPC is allowed in terms of prayer clauses (d) and (e) of the petition, which read thus:

d) This Hon'ble Court may be pleased

enough to supervise and Quashed the order dated 14.06.2016 passed by the Ld. 17th MM Court, Borivali, Mumbai in CC No.4501/PW/2008.

e) This Hon'ble Court may be pleased enough to re-call PW No.1 and allow defence to confront documents to PW No.1 in CC No.4501/ PW/2008 pending before Ld. 17th MM Court, Borivali, Mumbai.

10. However, the petition is being allowed on the condition that the petitioner pays to the first informant, within two weeks from today, an amount of Rs.10,000/- towards costs.

11. It is made clear that the Magistrate shall permit further cross-examination of the prosecution witness, (PW1), Mahavir Shivprasad Yadav, only upon the petitioner furnishing the proof of such payment of the cost of Rs.10,000/- to the respondent, within the stipulated period. If, for any reason, the respondent refuses to accept the cost from the petitioner, the petitioner shall immediately deposit the stated amount of Rs.10,000/- before the Magistrate within the aforesaid period of two weeks, upon which, the respondent shall be at liberty to withdraw the said amount forthwith. Needless to say, if the petitioner fails to pay/deposit the said amount of cost within the stipulated period of time, this order shall stand recalled without further reference to the Court.

12. The learned Magistrate is further directed to dispose of the

case bearing CC No.4501/PW/2008 as expeditiously as possible and in any case within a period of four months from today.

13. The petition stands disposed of in the above terms.

[R.N. Laddha, J.]