

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 268 of 2023

Tapan Kumar Chakraborty .. Applicant
Versus
Union of India and anr .. Respondents
...

Mr. H.G. Dharmadhikari with Lalita S. Phadke and Jeffy Caleb
for the applicant.

Mr. Amit Munde, Spl. P.P with Jai Vohra for respondent no.1.

Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 30th AUGUST, 2023

P.C:-

1 Heard learned counsel for the applicant and learned
counsel for the CBI.

2 The present Revision Application is filed being
aggrieved by an order rejecting the application filed by the
accused no.1 vide Exhibit-340 and 341, seeking recall of the two
witnesses i.e. PW nos.65 and PW 58, who were permitted to be
cross-examined by the counsel for the accused and being
aggrieved by the two witnesses cited by the prosecution in the
charge-sheet i.e. PW 59 and PW 60 having not been examined.

3 The accused who face a charge under Section 109 of the IPC along with Sections 13(2) read with Sections 13(1)(e) of the Prevention of Corruption Act, 1988 filed an application u/s.311 of the Code of Criminal Procedure before the Special Judge, for recall of the two witnesses.

 In support of the same, application contained the following pleadings :-

“3 During the early cross-examination certain questions could not be asked since there is change of circumstances on account of discharge of accused no.2.

6 The applicant wants to recall the witnesses so as to establish the evidential value of the ledger accounts which are relied upon documents (RUD)”

4 The witness sought to be recalled is one Tushar Jayantilal Purohit, Broker of Disha Securities and Services Pvt Ltd and a Sub-Broker of K.R. Choksi Shares and Securities Pvt Ltd, whereas PW 58 is one Sanjay Vasantraai Shah, Director of S.V.S. Securities Pvt.Ltd. The examination of these witnesses is placed on record at Exhibit-C and Exhibit-D and it can be seen that the witnesses were extensively cross-examined on behalf of the counsel for the accused no.1.

 The reason projected for their recall, is to establish the evidentiary value of ledger accounts. Another reason cited is, that

certain questions could not be asked and therefore, the recall is must.

5 Section 311 of the Code of Criminal Procedure permit any Court, at any stage of enquiry, trial or any other proceedings to recall and re-examine a person already examined, but this power is subject to a rider that the evidence must be essential to the just decision of the case.

 Having extensively cross-examined the aforesaid two witnesses, merely because the lawyer could not extract the necessary admissions or the material which he intended, in order to defend the accused, that recall could not be a granted by exercise of power under Section 311. As far as the proof of evidential value of the ledger account which is also projected as the ground, it is trite position of law that the evidentiary value of any document is not necessary to be extracted through a particular witness, but it is for the Court to determine so.

6 Reliance placed by the learned counsel on the decision in *Natasha Singh Vs. CBI (State) (2013) 5 SCC 741*, as well as the decision in case of *P. Sanjeeva Rao Vs. State of Andhra Pradesh, (2012) 7 SCC 56*, make the law amply clear to the effect that under Section 311 of Cr.P.C, the aspect to be considered is whether by not permitting the re-examination, any prejudice would be caused. It is not at all disputed that the accused is entitled for a fair trial and in order to achieve the said object when

the provision contained in form of Section 311 is to be seen, the Court is expected to be liberal enough to exercise the discretion judiciously so that opportunity is not denied to the accused. However, such a provision cannot be invoked at the drop of the hat because the counsel feel that the cross-examination of the witness did not yield any desired result.

7 As far as the second prayer in the application being to examine the two witnesses which were cited by the prosecution; one being the sub-broker of the securities and another Vice President of K.R. Choksi Shares and Securities Pvt Ltd, the CBI had responded to the application, by stating that the prosecution intended to examine the witnesses for proving the documents at Exhibit D-120, D-121, D-122 and D-127. However, out of these four documents, D-120 and D-127 is already admitted by the accused and it came to be exhibited. As far as Exhibit D-121 and D-122 are concerned, they are proved through PW 34 and even they were exhibited and the witnesses were cross-examined on the said aspect by the counsel for the accused.

The prosecution therefore, expressed to the Court that in order to minimize the duration of the trial and to avoid multiplication of witnesses, it chose not to issue summons to these two witnesses, whose role was limited for proving the documents :- D-120, D-121, D-122 and D-127.

8 Finding force in the aforesaid submission, the Special Judge deemed it appropriate not to issue summons to the witnesses, which would curtail the evidence and took note that on the relevant date, 37 witnesses were already examined by the prosecution and 7 witnesses were examined by the accused in his defence.

In particular, the impugned order record that the case is of the year 2009 and more than a decade has passed and hence it need a finality soon.

9 In the wake of the above, since it is the discretion of the prosecution to decide as to what witnesses, it intend to examine and if the prosecution is of the opinion that calling these witnesses would amount to duplication of the exercise, since the documents which were intended to be proved through these witnesses, are already exhibited through other witnesses and there is also cross-examination on the said aspect, I do not find any legal infirmity in the impugned order.

Upholding the same, the Revision Application is dismissed.

(SMT. BHARATI DANGRE, J.)