

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.916 OF 2022**

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Asif Malang Mujawar ..Applicant

VS.

The State of Maharashtra and another ..Respondents

Adv. Ritesh M. Thobde a/w Adv. Sagar S. Tambe for the Applicant.

Ms. Anamika Malhotra, APP for the State.

Adv. Megha Bajoria for Respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : JULY 31, 2023

P.C. :

1. Heard learned counsel for the parties.
2. The order impugned is dated 15th July, 2022 passed by the trial Court rejecting the application below Exhibit 36 for recall of victim for further cross-examination. It is the submission of learned counsel for the Applicant that the earlier advocate had not produced the material documents and no detailed cross-examination of the victim is taken. The documents produced along with the application Exhibit 36 are in the form of photographs. The trial Court observed that the application is vague and is silent as regards which document the defence wants to cross-examine the victim.

Further, it has been observed by the trial Court that photographs are produced with application Exhibit 16, but the negatives are not produced. In such circumstances, the trial Court observed that it is not necessary to recall the victim for cross-examination.

3. The victim was cross-examined. Section 313 of the Cr.P.C. statement is recorded. So far as the finding of the trial Court that mere changing of Advocate is not a ground to permit recall of the victim for cross-examination is concerned, I see no reason to take a different view. However, learned counsel for the Applicant made an attempt to contend that apart from the offence of Section 354 of the Code of Criminal Procedure ("Cr.P.C.", for short), the applicant is also charged for the offence punishable under Section 354D of the Cr.P.C. which is for stalking. By the document which is in nature of photograph and a letter, the applicant-accused wants to show that the applicant and the victim are known to each other and shared a good relationship. However, I find that the Application Exhibit 36 is rejected on the ground that the same is vague as there is

no document spelt out on which the defence wants to cross-examine the victim.

4. The application is vehemently opposed by learned counsel for the Respondent No.2 and learned APP.

5. It is submitted that the evidence under Section 313 of the Cr.P.C. was recorded as far back in July 2022 and the applicant is only interested in protracting the trial. It is further submitted that the victim should not be put to any further trauma and inconvenience considering the sensitivity of the matter.

6. The application has been rejected by the trial Court as it found the same to be vague in material particulars. No doubt the matter is sensitive, however it cannot be lost sight of the fact that even the Applicant-accused has arrived to a fair trial. I am therefore of the view that if an appropriate application for further cross-examination of the victim is made with material particulars of the documents, the same should be dealt with by the trial Court on its own merits without being influenced by the observations made in the impugned order.

7. Learned counsel for the Applicant had submitted that he would restrict his cross-examination only in respect of these documents and nothing else. Learned counsel for the Applicant submitted that this very stand will be taken before the trial Court.

8. I am not inclined to make any observations at this stage on the merits of the Application as it is for the trial Court to consider the Application, if made, on its own merits and in accordance with law.

9. Subject to this liberty, the Application stands rejected.

(M. S. KARNIK, J.)