



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1083 OF 2023**

Jatashankar Ramsurat Mishra	...	Petitioner
versus		
Shiv Shankar Mishra and Anr.	...	Respondents

Mr. Manoj R. Tiwari with Ms. Sejal Nalawade, Ms. Gunjana Surana, for Petitioner.
Mr. Viral Mukte i/by Ms. Geeta Patil, for Respondent No.1.
Mr. Y.M.Nakhwa, APP for Respondent No.2.

CORAM: N.J.JAMADAR, J.

DATE : 23 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition takes exception to the order dated 2 December 2022 passed by the learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai, whereby the application to recall the complainant for cross-examination preferred by the Petitioner came to be rejected.
3. Respondent No.1-complainant has lodged a complaint with the allegations that the Petitioner-accused has committed an offence punishable under Section 465 of Indian Penal Code by filing a false affidavit to change the name of the consumer in the records of the Electricity Distribution Company in connection with the supply of electricity at the subject premises.
4. The evidence of the complainant was recorded on 4 January 2016. Post

cross-examination on behalf of the accused, the complainant closed his evidence. The Petitioner, thereafter, took out an application to recall the complainant for further cross-examination on 7 August 2019. The learned Metropolitan Magistrate was of the view that adequate opportunities were given to the accused to cross-examine the complainant and the change of Advocate was not a justifiable ground to recall the complainant for cross-examination.

5. Learned Counsel for the Petitioner invited the attention of the Court to the cross-examination conducted on behalf of the Petitioner, on 1 April 2016. It was urged that the complainant has not at all been cross-examined on the aspect of alleged creation of false documents. Therefore, it is necessary to recall the complainant for further cross-examination to advance the cause of justice.

6. Learned Counsel for the Respondent No.2 – complainant countered the submissions on behalf of the Petitioner. It was urged that the Petitioner has resorted to dilatory tactics and sufficient opportunities to cross-examine the complainant was availed to the Petitioner-accused.

7. I have perused the allegations in the complaint. I have also perused the cross-examination conducted on behalf of the accused. Prima facie, it seems that the complainant was not cross-examined with regard to the documents which were allegedly falsely created by the Petitioner-accused. General cross-examination appears to have been conducted. It is trite, the object of the provisions contained in

Section 311 of the Code of Criminal Procedure, is to advance the cause of justice. The stage of the proceeding is not of a decisive significance if recall of the witness is otherwise necessary for a just decision of the case.

8. Undoubtedly, the aspect of delay in seeking the recall of the witness merits consideration. However, in the facts of the case, the Petitioner-accused can be put to terms so as to ensure that the cross-examination of the complainant is concluded in time bound manner.

9. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 2 December 2022 stands quashed and set aside, subject to the Petitioner paying cost of Rs.10,000/- to the Respondent No.1 Complainant on or before 1 February 2024.

(iii) The application to recall the complainant for cross-examination stands allowed.

(iv) The parties shall appear before the learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai on 2 February 2024.

(v) The Petitioner-accused shall complete the cross-examination of the complainant in one session and shall not seek any adjournment for conducting the cross-examination of the Respondent No.1 – complainant.

(vi) The learned Metropolitan Magistrate is requested to make an endeavour to conclude the trial as expeditiously as possible. Both the parties, especially the Petitioner-accused shall render necessary cooperation in the expeditious conclusion of the trial.

(vii) The Writ Petition stands disposed.

(N.J.JAMADAR, J.)