

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

CRIMINAL WRIT PETITION NO. 662 OF 2022

Prabha Krushnan Aiyar	...Applicant
Versus	
The State Of Maharashtra And Ors.	...Respondents

**WITH
CRIMINAL WRIT PETITION (ST) NO. 9026 OF 2023**

The State Of Maharashtra And Ors.	...Petitioner
Versus	
Pravin Balkrishna Kadam and Anr.	...Respondents

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Mr. Aashish Satpute, Advocate for the Applicant.
Mr. Nilesh Navale, Advocate for the Respondent Nos.2 and 3.
Mr. Arfan Sait, APP for the Petitioner-State in Petition.
Mr. Ullhas Surve, PSI Vartak Nagar Police Station.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th FEBRUARY, 2024.

P.C.:

1. The Applicant in Criminal Application No.662 of 2022 is the Original Complainant in the First Information Report dated 04th February, 2018 registered with Vartak Nagar Police Station vide

CR No. I 31 of 2018 for offence under Sections 306, 34 of the Indian Penal Code (“IPC”).

2. The Complainant has alleged that her mother Indubai Kadam was harassed by her real brother Pravin Balkrusha Kadam and his wife Sunita Pravin Kadam on the issue of rental received in respect of the premises and on account of looking after them. She was instigated to commit suicide. The victim committed suicide on 21st December, 2017.

3. On completion of investigation charge sheet was filed. The trial has commenced. Witnesses were examined. Evidence of P.W. No.6 Sagar Laxman Bhapkar was recorded and he was cross examined on 10th March, 2022. He is Police Sub Inspector and was attached to Vartak Nagar Police Station from July 2015 to January, 2019. He was on duty on 4th February, 2018.

4. The State preferred an application for recalling P. W. 6 under Section 311 of Criminal Procedure Code (“Cr.P.C”). The Accused filed say opposing the said application.

5. The learned Additional Sessions Judge vide order dated 28th June, 2022 rejected the application for recalling the witness.

6. The Applicant had challenged the order dated 28th June, 2022 by preferring the aforesaid application.

7. The State has preferred Criminal Writ Petition (ST) No. 9025 of 2023 challenging the same order before this Court.

8. Learned APP submitted that the application for recall of witness ought of have been allowed in the interest of Justice. The prosecution must be given an opportunity to prove the charge. The powers under Section 311 of Cr.P.C. are wide. The learned Judge has failed to consider, the documents such as Training completion, Attendance Registrar, Confirmation of P.W. 5. The Court has not considered the fact that the earlier application under Section 311 of Cr. P.C. was not pressed. It was wrongly held that these documents are not relevant. The powers under Section 311 of Cr.P.C are to be exercised for just cause.

9. The Advocate for the Applicant submitted that no prejudice would have been caused to the Accused if the witness was recalled. The Accused had right to cross-examine the recalled witness. The offence is of serious nature and sufficient opportunity has to be given to the prosecution to prove the charge sheet. P. W. 6 is the Investigating Officer. He has not taken on record the crucial

documents which were mentioned in the application. The learned Sessions Judge has committed an error in rejecting the application.

10. Learned Advocate for the Respondents-Accused submitted that no case was made out to recall the witness under Section 311 of Cr. P.C. Nothing prevented the Investigating Officer to bring on record the documents referred to in the Application. The documents were not relevant. The witness cannot be recalled to fill up the lacuna.

11. The trial has commenced. Six witnesses were examined. The deceased is the mother of the First Informant and Accused Pravin Balkrusha Kadam. Accused No.2 is the wife of the Accused No. 1. The victim committed suicide. The evidence of P. W. No. 6 was concluded on 10th March, 2022. Application under Section 311 of Cr. P. C. was preferred by the prosecution on 2nd May, 2022. The prosecution contended that while recording evidence of P. W. 6, certain documents were not taken on record. The documents which were sought to be brought on record were Training Completion Certificate 2nd February, 2018 issued by Deputy Superintendent of Police for training had during 29th January, 2018 to 2nd February, 2018, Attendance Register of Vartak

Nagar Police Station for the month of January, 2018 indicating that 28th January, 2018 was weekly off for P. W. 6 and Confirmation of statement of P. W. No. 5 recorded by I.O. under Section 161 of Cr. P. C. It was contended that the evidentiary value of the documents is very crucial and necessary to recall P. W. 6 to enable him to produce the aforesaid documents.

12. The state had filed similar application vide Exhibit 63 under Section 311 of Cr. P. C for recalling P. W. 6. The said application was withdrawn as “Not Pressed”.

13. The Accused has opposed the application on the ground that the documents relate to Personal Activities and Departmental Training of the Investigating Officer, which is unrelated to the present case. The defence has never disputed Personal Activities of the Investigating Officer. The application is vague.

14. The learned Additional Sessions Judge rejected the said application vide order dated 28th June, 2022, on the ground that the documents are not related to this case. The witnesses is already cross-examined.

15. The powers under Section 311 of Cr.P.C. can be exercised, at any stage of any inquiry, trial or other proceeding to summon any person as a witness, or recall and re-examine any person already examine and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

16. P. W. No. 6 is the Investigating Officer. He was cross-examined by defence. The application for recall of witness is vague is does not specify the purpose for which the documents are required to be brought on record. The prosecution ought to have brought those documents on record, if necessary when the evidence of the witness was recorded. The documents were not produced by prosecution. The documents are not related to the case. The documents relate to the training of the Investigating Officer. The documents are not related to the incident of suicide. The Trial Court has held that it is not essential to recall and re-examine P. W. No. 6. It was also observed that the prosecution intends to fill up the lacuna which is not permissible.

17. There is no reason to interfere in the order passed by the learned Additional Sessions Judge.

18. No case is made out to recall the witness. Hence, the Application as well as the Petition are required to be rejected.

ORDER

Criminal Application No.662 OF 2022 and Criminal Writ Petition (ST) No. 9025 of 2023 are rejected and disposed of.

(PRAKASH D. NAIK, J.)

GAYATRI
RAJENDRA
SHIMPI

Digitally signed
by GAYATRI
RAJENDRA
SHIMPI
Date:
2024.04.27
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