

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

CRIMINAL REVISION APPLICATION NO. 355 OF 2024

Ashok Vishwanath Kamble	... Applicant
Versus	
State of Maharashtra	...Respondent

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Ms. Apeksha Vora, for the Applicant.

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CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	15th JULY, 2024

P.C.:

1. Heard the learned counsel for the Applicant. The Application questions the order dated 09.05.2024, passed by the Special Judge on Application below Exhibit-54 seeking recall of the prosecution witness Nos. 1 and 7 for cross examination. The learned Court has rejected the Application by the impugned order on the ground that change of counsel, which has occurred on 16.10.2023 cannot be a ground for the purpose of recall.

2. Learned counsel for the Applicant submits that prejudice is being caused to the Applicant on account of relevant questions not being put to the witnesses PW-1 and PW-7, on account of which recall

is necessary.

3. She further relies upon Judgment in *Satbir Singh Versus State of Haryana and Others*¹ decided on 29.08.2023, in which the application for recall has been allowed.

4. In the instant case it is not in dispute that PW-1 has been examined on 26.09.2023 (page 26) and was cross examined by the learned counsel for the accused, thereafter PW-7 has been examined 16.01.2024 (page 75) and also has been examined by the learned Counsel for the Accused/Applicant.

5. The power of the Court to recall a witness, under Section 311 of Code of Criminal Procedure (Cr.PC.) is a power which has to be exercised cautiously and cannot be used as a matter of routine, to set back the trial, merely for the sake of asking. In the instant case, there is no dispute that PW-1 and PW-7 have been cross examined by the learned Counsel for the Applicant/Accused. Merely because the counsel was appointed counsel from the legal aid, does not change the situation. The Application under Section 311 of Cr.PC., came to be filed at the stage when the argument from the learned counsel for the applicant/accused were partly heard. The change of counsel is on

¹ 2023 SCC OnLine SC 1086

16.10.2023. There is nothing on record to indicate as to why the application was not filed earlier in point of time immediately when witness nos. 8 and 9 were examined. That apart, the power of recall, cannot be used to again recommence cross examination, but has to be only used upon demonstrating, as to why the recall and re-examination is necessary. In my considered opinion, no case is made out in this regard. Though *Satbir Singh (supra)* has been relied upon para 12 therein indicates, that the view taken therein was under the peculiar facts of that case and does not lay down a general proposition.

6. In that view of that matter, I am not inclined to interfere with the impugned order. The Revision Application is dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)