

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

CRIMINAL REVISION APPLICATION NO. 380 OF 2024

Shivaji Raghunath Mohite

... Applicant

vs.

State of Maharashtra

... Respondent

Ms. Apeksha Vora :-	Advocate for Applicant.
Mr. A. S. Gawai :-	Advocate for Respondent.

CORAM : S. M. MODAK, J.

DATE : 10th SEPTEMBER 2024

P. C. :-

1. Heard learned Advocate Ms. Vora for Applicant / Accused and learned APP Mr. Gawai. This is Revision against the order dated 29th May 2024 passed by Court of Sessions Judge, Greater Mumbai. The Applicant filed two Applications. **One** at Exhibit No. 72. It is for recalling Investigating Officer PW No. 10. The reason is not recording in cross-examination certain answers given by him to the questions put forth by Ms. Vora. **Second** Application is at Exhibit No. 73. It is for

recalling PW No. 1 and PW No. 5. **PW No. 1** is eye witness to the incident. He is one Vijay Salve who is first informant. Whereas **PW No. 5** is one Prakash Kirdat who is truck driver of truck bearing number MH-01-CR-6707. The learned Judge as per the impugned order dated 29th May 2024 has rejected both the applications. I have read the order.

2. Reasons pleaded for recalling PW No. 5 does not found convincing. He has given the number of truck as MH-01-CR-6707 whereas Investigating Officer - PW No. 10 was cross-examined and in paragraph No. 15 answers are recorded. Initially he stated number of the vehicle as MH-01-CR-6701. The contention is PW No. 10 has given different number and Investigating Officer has given different number. This is not sufficient for recalling PW No. 5. At the most the Applicant can take this as a ground while arguing the case finally and the learned trial Judge may decide it while deciding the case finally.

3. For recalling PW No. 1, I am convinced. Learned judge in paragraph No. 4 observed PW No. 1 has neither referred about CCTV footage nor stated about the same. He further referred his evidence was

recorded on 15th October 2021 and the charge was framed much earlier on 29th September 2021. The prayer was refused for not making grievance about availability of CCTV footage earlier. It is a fact that this CCTV footage was referred by PW No. 6 - Pradeep, who is looking after the maintenance of the cameras.

4. My attention is invited to the order dated 20th February 2023. On that date PW No. 6 was present. Prosecution was directed to give copies of CD to the Accused. They were subsequently given and then PW No. 6 was examined on 13th April 2023. The copy of his evidence shown to me bears date 16th April 2023. Both the dates are different. Learned trial judge to look into this issue.

5. Even though it may be true that Accused has not pressed for copy of CD but it is also true that prosecution has examined the concerned witness PW No. 6. If material is produced by the prosecution subsequently, the defence ought to have given an opportunity to cross-examine the witness, who is concerned with this subsequent materials and CD. It is contended that CD contains recording of events which is not supporting the version of PW No. 1.

The trial is going on. Opportunity of cross-examination can be availed during trial stage only. The appreciation will come later on. If the Accused is not given this opportunity, he may lose his right to put forth the veracity of the evidence of PW No. 1. Learned trial Judge was not right in refusing that request. I am allowing it.

6. Now issue of PW No. 10 remains. My attention is invited to the answers given by this witness in paragraph No. 20. He was put a question whether the deceased has consumed liquor before coming to the said Bar. There are two events. One at Yatrik Bar and another outside the Bharti Co-operative Housing Society. At both the places the Complainant consumed liquor. Whether deceased consumed liquor or not is in dispute. Investigating Officer has denied the suggestion that the deceased consumed liquor before coming to said Bar. Contention is concerned doctor was cross-examined in respect of level of alcohol. According to defence, the deceased was already drunk. My attention is invited to the following documents :-

(i) Statement of Suraj Sakhare (Page No. 46). He has referred about drinking alcohol by him and the deceased Kishor and by PW No. 1 – Vijay. He was not examined.

(ii) The evidence of PW No. 1 – Vijay (Page No. 51). In paragraph No. 1 he has stated about ordering liquor and they consumed it. The deceased Kishor was also there in the Yatrik Bar. In cross-examination this witness has expressed doubt whether the deceased Kishor and other witness consumed liquor near the construction site.

7. From the above what I have gathered is that the Investigating Officer was not cross-examined in a proper manner. Considering the fact that PW No. 1 is recalled, there may be occasion for the defence to recall Investigating Officer for cross-examination. In the interest of justice, I am permitting the Accused to re-cross examine PW No. 10 only for limited aspect as referred in this paragraph. In view of that following order is passed:-

ORDER

- (i) The impugned order dated 29th May 2024 is set aside only in respect of PW No. 1 and PW No. 10. The Applicant is permitted to re-cross examine PW No. 1 on the point of C.D. containing CCTV footage from Yatrik Bar and PW No. 10 for limited aspect.
 - (ii) Parties to act upon authenticated copy of this order.
9. Revision Application is disposed of.

[S. M. MODAK, J.]

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