

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 914 OF 2024

Gousoddin Jilani Sayyed Applicant

Versus

State of Maharashtra Respondent

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Adv. Osman A. Chishty, Advocate for the Applicant.
Adv. P. P. Bhosale, APP, for the Respondent – State.
Mr. Ishwar Chorge, PSI, Mahalaxmi Police Station – Present.

CORAM : R. M. JOSHI, J.

DATE : 9th SEPTEMBER, 2024.

P.C. :

1. Heard.
2. This Application takes exception to the order passed by the Sessions Court rejecting the application for recalling of PW-3 for further cross-examination. Application Exhibit-95 filed on behalf of the defence came to be rejected by passing impugned order.
3. Learned counsel for the Applicant submits that the Applicant is facing serious charge for the offence punishable under

Sections 302 and 307 of Indian Penal Code, 1860 (for short “IPC”). It is his submissions that in the application at Exhibit-95 it is specifically stated that certain new facts have emerged in the evidence and therefore, it is necessary to recall PW-3 for his further cross-examination.

It is his submission by relying upon the judgment of Karnataka High Court in the case of *Rajesh and Ors. Vs. State of Karnataka*¹ that a statement about revelation of new facts is sufficient and no other contention is required to be raised in the application. He also drew attention of this Court to the judgment of the Supreme Court in the case of *The State represented by the Deputy Superintendent of Police Vs. Tr. N. Seenivasagan*² and *Natasha Singh Vs. CBI (State)*³, which deals with power of Court to recall a witness.

4. Learned APP opposed the application, on the ground, that the witness has been sought to be recalled after seven years without any reason or justification and in facts and circumstances of the case order impugned deserves no interference.

5. There cannot be any dispute made that with regard to the proposition sought to be canvassed by the learned counsel for the

¹ MANU/KA/0030/2006

² Criminal Appeal Nos.231 – 232 of 2021

³ 2013 AIR SCW 3554

Applicant that trial Court has power to recall witness. The question arises as to whether, it is mandatory for the Court to do so, once application is filed in this regard or case is required to be made out for that purpose.

6. Though, perusal of the application does not indicate the new facts which are said to have been emerged in the evidence, but during the course of the submissions before this Court it is revealed that in the cross-examination of the Investigating Officer, it is brought on record that the fact of recording statement of the sons of accused i.e. PW-3 and DW-2 on 9th February, 2012 is not reflected in the communication addressed by the Investigating Officer to his Superior. Learned counsel has also sought to make submission that Accused has examined DW-2, who is son of Accused and from his statement contradictions have appeared in statement of DW-2 & PW-3.

7. Insofar as the admission sought from the Investigating Officer with regard to non communication of the recording of statements of this witness is concerned, there is no question in the the cross-examination to PW-3 in this regard, as the correspondence between Investigating Officer and his Superiors cannot be confronted

to this witness. It would however be open for the defence, to make use of admissions of Investigating Officer to support his case of innocence. Merely because there are discrepancies in the evidence of 2 independent witnesses, the same cannot become a ground to recall witness for further cross-examination. Thus, the contention of Applicant fails on both Counts.

8. Apart from the above facts, it is pertinent to note that the witness is being son of accused and he is now sought to be recalled after 7 years and in absence of case being made out for recall, order impugned deserves no interference. Moreover, learned APP has informed to this Court that the recording of evidence of prosecution is already over before trial Court and that the defence has also examined four witnesses. In such circumstances, this Court finds no reason or justification to cause any interference in the order of rejection of the application for recalling of the witnesses.

9. Hence, application stands dismissed.

(R. M. JOSHI, J.)