

Uday S. Jagtap

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

**CRIMINAL APPLICATION NO. 973 OF 2024**

Balbhim Shivajirao Gitte .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Aniket Nikam a/w Mr. Amit Icham for the applicant

Ms. Anamika Malhotra, APP for the respondent – State

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**CORAM : PRITHVIRAJ K. CHAVAN, J.**

**DATE : 13<sup>th</sup> JANUARY, 2025.**

**P.C.**

1. Heard learned Counsel for the applicant and the learned

APP.

2. The applicant is one of the witnesses in a criminal case filed against the accused for the offences punishable under Sections 307, 498A, 324, 504, 506(1) r/w 34 of the Indian Penal Code. The learned Additional Sessions Judge, Pune by an impugned order dated 20.06.2023 passed below Exh.59 in Sessions Case No.428 of 2014, rejected the application filed by

the prosecution to recall the witnesses namely, applicant – Balbhim Gite and the complainant – Vandana Nangare. The sum and substance of the impugned order, as reflected, is that the applicant, despite due service of summons and even after issuance of bailable warrant, avoided to appear before the Court to record his evidence. The learned Additional Sessions Judge, therefore, noted that the evidence of the applicant needs to be dispensed with, since he has not obeyed the order of the Court. Such finding recorded by the learned Additional Sessions Judge are against the basic principles of Criminal Jurisprudence that the prosecution will have to be given an opportunity to examine all the witnesses, who are aware of the facts of the case, much less, when the case is in respect of the offences punishable under Sections 307 and 498A of the IPC.

3. Learned APP is *ad-idem* with the submissions made by Mr. Nikam, learned Counsel for the applicant.

4. The order impugned is perverse and, therefore, needs to be set aside. Accordingly, the impugned order is set aside.

5. The applicant is directed to remain present before the Court on the next date. The applicant shall deposit costs of Rs.2,000/- in the trial Court on the date, when he will appear for giving evidence. The trial Court shall proceed further in accordance with law without granting unnecessary adjournments.

6. In view of the above, the application stands disposed of.

**(PRITHVIRAJ K. CHAVAN, J.)**