
(2011) 08 BOM CK 0046

In the Bombay High Court

Case No : Criminal Application No. 401 of 2011

Mansaram Shaligram Sawalkar and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Penal Code, 1860 (IPC) — Section 109, 376(g)

Citation : (2011) 08 BOM CK 0046

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : V.S. Bapat, for the Appellant; Kalyani Deshpande, Assistant Public Prosecutor for State, for the Respondent

Judgement

Bhangale A.P., J.—Heard learned Counsel for the applicant. Admit. Ms. Kalyani Deshpande, learned Additional Public Prosecutor waives notice for respondent-State Since the question involved in the application is very limited, the same is taken up for final disposal forthwith by consent of parties. Applicants are accused in Sessions Trial No. 7 of 2010 and are facing prosecution for the offence punishable u/s 376(g) read with section 109 of the Indian Penal Code. After the evidence of the prosecutrix (P.W. 1) was over, applicants moved application for recalling her for the purpose of further cross-examination, it was stated that omissions and contradictions were not brought on record.

2. Even though there was no mention in the application that failure to bring on record omissions and contradictions were attributable to the earlier Advocate, it was argued before the Sessions Court as well as before this Court that for the inefficiency of the lawyer, accused who are suffering serious accusations, should not suffer.

3. Learned Counsel for the applicants has relied upon ruling in the case of Riyazuddin and Others Vs. State of U.P., . It appears that the Apex Court in the case of Riyazuddin and ors. (supra) had granted an opportunity and had directed

the learned Additional Sessions Judge, in view of section 311 of the Code to allow reexamination/cross-examination of witnesses on the particular specified date subject to costs and expenses. u/s 311 of the Code of Criminal Procedure, the trial Court possesses powers to summon, re-call, re-examine any witness if his evidence appears to be essential for just decision of the case. After all, object of the criminal trial is to find out truth and it is the right of the accused to have fair opportunity. In the result, impugned order dated 11.7.2011 is quashed and set aside. Application (exhibit 42) filed by the accused is allowed subject to payment of costs of Rs. 1000/- payable by applicants-accused to the prosecutrix (PW 1). Criminal Application stands disposed of accordingly.