

R.C.C.No. 328/2015**ORDER BELOW EXH.72**

1. The present application is filed by accused for recalling of witness No.12 Kedar Bhagwat for cross-examination. It is the contention of the accused that, chief examination of said witness has been already recorded by this court. But accused preferred a revision application No.72/2017 before session court which was ultimately got rejected. Therefore accused failed to cross-examine the said witness. Hence the present application.

2. On the other hand Ld. A.P.P. filed her say on overlea of the application and strongly objected the same. She contended that, the chief examination of said witness was recorded on 02/11/2017. The application vide exh.62 filed by Advocate for the accused on the same date also got rejected. Advocate for accused denied to take the cross-examination of said witness. Therefore no cross-examination order was passed against the accused on the same date. The present application is illegal therefore she prayed to reject the application.

3. It is argued on behalf of the accused that they have preferred revision application before Sessions Court, therefore they failed to cross-examine witness No.12 Kedar Bhagwat. He further argued that, considering the principle of natural justice, it is necessary to give the chance for cross-examination of the said

witness. If such chance is denied then it will caused injustice to the accused. Therefore he prayed for allowing the application.

4. On the other hand, Ld. A.P.P argued that, once the cross-examination has been denied by advocate for accused, he cannot be permitted again to cross-examine the same. She further argued that, the chief examination of said witness has been recorded on 02/11/2017. But on the same day accused denied to take the cross-examination of witness No.12 Kedar. Therefore, now accused cannot prayed to allow again for cross-examination of said witness, therefore she prayed to reject the application.

5. On perusal of chief examination of witness No.12 Kedar Bhagwat, it is seen that, advocate appearing for accused denied to take the cross-examination of said witness. His application vide exh.62 was also rejected by the court. Though, the Ld. Advocate for accused denied to take the cross-examination at that time, it cannot be said that, he has lost his right to cross-examination of the said witness. Admittedly accused have preferred revision application bearing No.72/2017 before Session Court which ultimately got rejected. While deciding the said revision application Hon'ble Sessions Court gave liberty to the applicant i.e. present accused to filed the present application and also directed that, trial court shall decide such application on its own merits.

6. Considering the merits of the present application, accused did not provide any reasonable explanation about why they have denied the cross-examination of said witness on that day. Though, no such reasonable explanation is provided by the accused, it is necessary to allow the present application only in the interest of justice. Because if accused are denied the chance of cross-examination of said witness then it will cause injustice to the accused. But while allowing the present application, the costs should be incurred upon the accused. Hence the following order:

ORDER

1. Application is allowed subject to costs of Rs.500/- payable to government
2. Accused should provide witness Bhatta to the said witness.
3. Issue witness summons to witness No.12 Kedar Bhagawat accordingly.

Daund
Date : 27/08/2019.

(A. A. Kalamkar)
3rd Jt. C.J.J.D. and J.M.F.C., Daund

CERTIFICATE

I affirm that the contents of this P. D. F. file order are same, word to word, as per the original order.

Name of the Stenographer	:	T.R.Bagwan
Court	:	A.A.Kalamkar 3 rd Jt. C.J.J.D. Daund.
Date of order	:	27.08.2019.
order signed by the	:	
presiding officer on	:	27.08.2019.
order uploaded on	:	27.08.2019.