

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No. 460 of 2015

Chetan Popatlal Bhalgat.

.. Petitioner.

Versus

The State of Maharashtra.

.. Respondent.

Shri. Amit A. Yadkikar, Advocate, for petitioner.

Shri. P.N. Mule, Additional Public Prosecutor, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 23rd JUNE 2015

ORDER:

1) The petition is filed to challenge the order made by the learned Judge of the Sessions Court on Exhibit 523 from Sessions Case No.100/2006. the application was filed under section 311 of the Code of Criminal Procedure by the present petitioner, who is facing trial, for calling investigating officers Smt. Pushpa Deshmukh and Shri. Rakesh Mangaonkar as Court witnesses. It is the contention of the petitioner that these

officers had taken over some record which is material and the prosecution ought to have examined these witnesses but the prosecution has avoided to examine them. The prosecution opposed this application by contending that other investigating officers were examined and the prosecution had no intention to examine these two witnesses and no prejudice is caused due to non examination of these witnesses.

2) The learned Additional Sessions Judge has observed that the matter is very old, of the year 2006 and it is at the stage of conclusion. It is observed that defence cannot compel the prosecution for examination of such witnesses and this is not such a case where the Court needs to exercise power under section 311 of the Code of Criminal Procedure.

3) The learned counsel for the petitioner, accused, has placed reliance on some reported cases like :-

(i) **Criminal Writ Petition No.1212/2013 (Vijay Bodkhe v The State of Maharashtra) decided on 282- 2014 (Aurangabad Bench);**

- (ii) **(2004) 4 SCC 158 Zahira Habibulla v. State of Gujarat);**
- (iii) **(2006) 7 SCC 529 (U.T of Dadra and Haveli v. Fatehsinh Mohansinh Chauhan);**
- (iv) **(2013) 14 SCC 461 (Rajaram Prasad Yadav v. State of Bihar).**

4) This Court has carefully gone through the facts of the aforesaid cases and also the observations made by the High Courts and the Hon'ble Apex Court. Facts of each and every case are always different. Charge is framed against the present petitioner for offence punishable under the provisions of Immoral Traffic (Prevention) Act, 1956 and also section 376 Indian Penal Code. There is allegation against the present petitioner that when the victim girl was made to work in brothel house, present petitioner had taken sexual intercourse with her and this was done with the help of other persons who were running the brothel house. It is the case of the girl that at the relevant time she had not completed age of 18 years.

5) The learned counsel for the petitioner submitted that the statements recorded by police of the mother of the girl were not consistent with each other and

at least one statement was showing that the girl had crossed age of 18 years. The mother is not examined as a witness. Submission was made that statements of other relatives like one sister of the girl and one brother were also recorded but those witnesses are not examined as their evidence would have helped the accused. Only because some witnesses are not examined by the prosecution, Court is not expected to use section 311 of the Code of Criminal Procedure for proving the information collected by the investigating officer. That material can never be used as substantive evidence. It was open to the petitioner to lead evidence to prove the age of the said girl in other way but he avoided to do so.

6) One more submission was made and that is about inconsistency in the name given to police by this girl and the record about the name of this girl and name of her sister. The petitioner wants to show that name of the present girl is Miligret who was elder sister and she had crossed the age of 20 years at the relevant time. This contention also cannot be proved by examining the police officers. It is important that the petitioner is

not disputing that the girl who is examined as witness in the Court was found at the place which was being used as brothel house. There is no dispute about identity. If there was any dispute about identification, doctors were in the Court and something could have been asked to the doctors during cross examination of the doctors. Such step was not taken. In any case there is material collected in respect of everything and the prosecution has examined relevant witnesses for proving even the age. It is up to the trial Court to decide as to whether adverse inference needs to be drawn due to non examination of aforesaid two witnesses. The accused cannot use the Court for proving his defence when he could have taken aforesaid steps. This Court holds that the trial Court has committed no error in rejecting the application.

7) In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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