

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

CRIMINAL WRIT PETITION NO.623 OF 2015

Pandit Gopal Survase

.. Petitioner

Versus

The State of Maharashtra

.. Respondent

Mr.S.S.Chaudhary, Advocate for the petitioner.

Mr.S.M.Jadhav, APP for the respondent/State.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 06.05.2015

PER COURT :-

. Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioner herein is an accused in Special Case No. 3 of 2011 pending before the Special Judge at Umarga. The petitioner herein is facing the charges under Section 13(1)(B) & 13(1)(D) of the Prevention and Corruption Act 1988. It is the case of the petitioner that in the course of the trial the prosecution has

recorded the substantive evidence of five witnesses to bring home the guilt of the accused. After recording of the substantive evidence of five prosecution witnesses the prosecution had filed 'evidence closed pursis'. The learned Special Court has recorded the statement of the accused under Section 313 of the Criminal Procedure Code on 7th March, 2015. In answer to question No. 48 the petitioner herein had specifically demonstrated before the Court that he desires to examine defence witnesses and that he is submitting a list of defence witnesses. The statement of the accused/petitioner under Section 313(2) of the Criminal Procedure Code was also filed on 10th March, 2015.

3. It appears from the record that the Advocate representing the accused had not submitted the list of defence witnesses. However on 19th March, 2015 the accused had examined Shri Shamsundar Gaikwad as defence witness No.1. On 27th April, 2015 the Advocate representing the accused had filed an application below Exh.73 requesting Special Court to grant permission to examine Shri Somnath Mali as a defence witness since he was working as an Inward-Outward Register Clerk in the said office. The learned Special Court has observed that after conclusion of the evidence of the witness the learned APP had given suggestion that the entry in the

Inward-Outward register were not in the hand writing of the DW 1 but in the hand writing of the another person and therefore it is necessary to examine the concerned employee to prove his hand writing. The learned Special Court has observed that the defence counsel at that stage had informed the Court that the extract of the Inward-Outward register is admitted and that the said extract is certified copies of the public document. Accordingly to the Special Court it was not necessary to examine the witness. Special Court has also observed that on earlier occasion also an application below Exh.67 was filed only in order to protract the proceedings. That challenge of order rejecting the application below Exh.67 was pending before the High Curt and that the proceedings had not be stayed by the Hon'ble High Court. The said exercise undertaken by the defence counsel was considered by the Special Judge as delaying in practice and hence the application was rejected upon imposing cost of Rs. 5,000/-.

4. Learned Advocate for the petitioner submits that in fact in answer to question No.48 the petitioner had specifically informed the court that he desires to examine the defence witness and that the Advocate had failed to give the list of witnesses. In any case the petitioner cannot be deprived of an opportunity to

examine defence witnesses as he is being tried under the provisions of the Prevention and Corruption Act. It is necessary for an accused to rebutt the presumption and to deomonstrate preponderance of probability. In view of this the applicant deserves an opportunity to examine the witness Shri Somnath Gurushantappa Mali. Order granting penalty need not be interfered. However the applicant deserves an opportunity to examine the defence witness. Hence the petition deserves to be allowed to that extent only.

5.

ORDER

I) Criminal Writ Petition is allowed in terms of prayer clause "B"

II) Learned Special Court shall give a fixd date to the petitioner to examine the defence witness Shri Somnath Gurushantappa Mali. Learned Advocate representing the accused shall make every effort to examine the defence witness on the given date and not seek any further adjournment on any unreasonable ground.

III) Rule is made absolute in above terms, petition stands disposed of.

IV)The petitioner to pay the cost of Rs.5,000/- and deposit it in the Lower Court before examining the defence witness.

[SMT. SADHANA S. JADHAV, J.]