

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

CR.WP NO.1209/2015

44 CRIMINAL WRIT PETITION NO. 1209 OF 2015

DEEPAK S/O PUNDALIK INGLE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Petitioner : Mr. Rupesh A.Jaiswal h/f
Mr.Ghanekar Nilesh S.
APP for Respondent State: Mr.U.S.Mote

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CORAM : P.R.BORA, J.
Dated: October 05, 2015
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PER COURT :-

1. Heard the learned Counsel for the petitioner and the learned A.P.P.

2. The petitioner is the accused no.1 in Sessions Case No.184/2010, pending in the Court of Additional Sessions Judge-2, Aurangabad. On 2nd September, 2015, the said Sessions case was fixed for the evidence of the accused therein. On the said date, learned Counsel for the present petitioner i.e. accused no.1, filed a Purshis contending therein that since the accused is not feeling well and hence unable to adduce his evidence, next date may be given to him. The learned Additional Sessions Judge, however, closed the defense evidence and has fixed the matter for arguments.

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3. Shri Jaiswal, learned Counsel appearing for the petitioner, submitted that without recording any reason and without considering the Purshis filed by the present petitioner, the learned Additional Sessions Judge closed the defense evidence which has caused serious prejudice to the petitioner. The learned Counsel submitted that the petitioner must have been given an opportunity to put forth his defense on oath and adduce the further evidence in his defense.

Learned A.P.P. has opposed the prayer so made by the petitioner contending that on the given date the accused ought to have adduced his evidence and nothing wrong has been committed by the learned Additional Sessions Judge in closing his defense when he did not adduce his evidence on the said date.

4. I have considered the submissions made by the learned Counsel for the petitioner and the learned A.P.P. In the impugned order, the learned Additional Sessions Judge has recorded, "the accused is not ready to give deposition. Hence, evidence of defense is closed". Apparently, it appears that the learned Additional Sessions Judge did not consider the request made by accused no.1 i.e. the present petitioner for giving him next date to adduce his evidence on the ground that on 2.9.2015, he was not feeling well and was, therefore, unable to give his evidence before the Court. Having regard to the Purshis so filed by accused no.1, it cannot be said that he was not ready to give his evidence. In such circumstances, it appears to me that the learned Additional

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Sessions Judge should have given an opportunity to the petitioner for adducing evidence in his defense. Denying the said opportunity to the petitioner will certainly cause prejudice to him. The petitioner has undertaken that he will not seek any further adjournment and will adduce the evidence on the date which may be fixed by the learned Additional Sessions Judge.

In view of the above, I am inclined to allow the present petition. In the result, the following order:

ORDER

- (i) The Criminal Writ Petition (No.1209/2015) is allowed.
- (ii) The learned Additional Sessions Judge-2, Aurangabad, shall permit the petitioner i.e. accused no.1 in Sessions Case No.184/2010 to adduce the evidence in his defense.

(P.R.BORA, J.)

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