

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 797 OF 2015

Ajaay Shyam Jajodia	...	Applicant
vs.		
The State of Maharashtra & Ors.	...	Respondents

Mr.Ajaay S. Jajodia,applicant in person present.
Ms. A.A.Mane, APP,for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 21st August, 2015.

P.C.

Heard. This is an application under Section 482 of Cr.P.C. seeking the relief of quashing and setting aside the order passed by the Addl. Chief Metropolitan Magistrate, 11th Court at Kurla,Mumbai, thereby disallowing the questions put to PW-2 by an order dated 22.4.2015. The applicant is the original accused No.3 in C.C. No. 46/SW/2009, pending before the Addl. Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai, wherein the applicant-accused is being tried for the offences punishable under Sections 420, 406, 403 read with Section 120B and Sections 464, 465, 467 and 471 of Indian Penal Code. The applicant submits that originally, there were 8 accused persons. However, the trial is proceeding only against the present applicant. The learned Magistrate has framed

charge under Sections 465 and 467 of Indian Penal Code.

2. The applicant submits that recording of substantive evidence has commenced. PW-1 Ratnakar Gavaskar was examined as he happens to be the complainant. The said witness was cross-examined at length. The cross-examination had concluded on 21.2.2015. The Court was recording substantive evidence of PW-2. In the course of cross-examination, the applicant herein had confronted PW-2 with two letters of Dr. Salagia dated 17.5.2001 and 8.9.2001 which are marked at Exhibit 96 which is produced by PW-1, and asked the following questions :-

“Que. What do you have to say about this two letters Mr. Salagia addressed to Mr. Shyam Jajodiya which have been to produce by Mr. Gavaskar ?”

The said question was disallowed by passing an order which reads as follows :-

“Since the P.W.no.01 has already been examined as P.W.No.01 and hence this question is objected. Since the present witness is on entirely different footing and the witness is not the author of the said letters and already answered. Hence, this question is disallowed.”

The next question put by the applicant was :-

“Que Whether Mr. Gavaskar shown this letters before producing in the court ?

Ans: I was not involved in procedure and that is why he must not have shown this letter to me.

Que Why these letters of Mr. Salgia have not been referred in present complaint which has been filed as per your direction ?

This question is also disallowed as the witness is not concerned with the letter, neither he is the author nor it is addressed to him. The P.W. no.01 is already examined and cross-examined.”

3. The letter is dated 17.5.2001 addressed to Mr. Shyam Jajodia. The prosecution witness No.2 has been referred in this letter as Dr. Salgia had informed Mr. Shyam Jajodia that he has to pay cash component of Rs.10 lakhs to Mr. Behere, who happens to be PW-2. Similarly, in the letter dated 8.9.2001 written to Mr. Shyam Jajodia by Dr. Salgia also refers to Rs.23 lakhs paid to PW-2 and another witness. According to the applicant, it cannot be said that witness PW-2 has no concern with the said transactions. In fact, all that the applicant wanted to ask the witness was whether the contents of the said letter were within the knowledge of PW-2 and whether the said transaction has materialized or not. The applicant fairly admits that the question was not drafted or put to the witness in that particular manner and, therefore, there was lack of communication between the Presiding Officer and the applicant who was cross-examining the witness. The Court cannot be oblivious of the fact that the applicant, who is

not a lawyer by profession, has put the questions in a different manner. In fact, the Presiding Officer could have given an opportunity to re-draft the questions and find out relevance between the reference to PW-2 in the said two letters dated 17.5.2001 and 8.9.2001. The applicant submits that in fact he wanted to confront the witness with the said letters, but no opportunity was given to him. The witness may admit or deny his concern after being confronted with the said letters. However, the applicant would deserve an opportunity to confront the witness with the said letters and it cannot be denied to him in the interest of justice.

4. In view of this, the application deserves to be allowed in terms of prayer clause (c). The learned Magistrate shall allow the present applicant to confront PW-2 with the said two letters and put the questions accordingly. The orders dated 22.4.2015 and 21.7.2015 are hereby quashed and set aside.

Application is allowed in the above terms.

Learned magistrate to act upon the authenticated copy of this order.

(SMT.SADHANA S.JADHAV, J.)