

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [APPLN] NO.541 OF 2015

Mr. Santosh Uttam Kamble

..Applicant

Versus

The State of Maharashtra

..Respondent

....

Ms. Sandhya A. Mailagir, Advocate for the Applicant.

Mrs. P.P. Bhosale, APP, for the State.

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CORAM : A. R. JOSHI, J.

DATE : 7th SEPTEMBER, 2015

P.C.

1. Heard learned Counsel for the applicant on this application for transfer of pending Sessions Case No.357/2013 pending before the District and Additional Sessions Judge-4, Thane.

2. Present application is under Section 407 of Cr.P.C., filed on the allegations that the trial Court has biased against the accused. On 3.9.2015 a report from the trial Court was

called. The report is now shown to the Court today, which is dated 5.9.2015. The report reveals that after recording of the evidence of PWs-1 to 7, two medical officers were called. On 2.7.2015 examination-in-chief of PW-8 Dr. Ujwala Gute and PW-9 Dr. Vishal Ganar was recorded. However, on that date an application was moved on behalf of the applicant/accused mentioning that his Advocate was busy in another Court. Thereafter the matter was adjourned to 3.7.2015. On 3.7.2015 PW-9 Dr. Vishal Ganar was present. His cross-examination was to be started. However, again one application was preferred on behalf of the applicant/accused for adjournment which was rejected and 'no-cross' order was passed and said witness was discharged, being a medical officer. The report further reveals that the cross-examination of PW-8 is remained and further two to three witnesses are yet to be examined including the Investigating Officer. The case is now posted on 8.9.2015 for evidence.

3. On the contents of the report, as detailed above, learned Counsel for the applicant brought to the attention of this Court that initially witnesses PWs-1 to 7 were cross-

examined promptly on the relevant dates and no adjournments were sought by the applicant/accused. Learned Counsel also showed the certified copy of the application (Exhibit-62) made before the Sessions Court. This application is dated 3.7.2015 asking for the date for cross-examination of the Medical Officer (PW-9). In the said application it is mentioned that the applicant had filed an application of transfer before the Principal District Judge, Thane and there were oral directions from the said Court that till the application is pending, the further proceedings in the Sessions Case shall not be continued. It is submitted on behalf of the applicant that inspite of such mentioning in the application for adjournment, the trial Court rejected the application and also passed an order of 'No-Cross' so far as PW-9 is concerned. It is expected from a Judicial Officer that if an Advocate, who is an officer of the Court, makes any statement regarding oral directions granted by the Superior Courts i.e. Principal District Sessions Judge in this case, the concerned trial Court should ordinarily refrain from proceeding further with the matter unless it is of extreme urgency. When any such statement is made by an Advocate, at least, the trial Court should not have insisted for the written directions.

4. But whatever that may be, in the present matter only because of not acting on the oral statement and taking action by the trial Court in discharging the medical witness PW-9, it cannot be said that the trial Court is biased against the applicant/accused. In any event in the opinion of this Court the circumstances do not warrant for change of the Court. Furthermore the grievance of the applicant can be taken care of as to allowing him to cross-examine PW-9 on his making such application before the trial Court. So far as cross-examination of PW-8 is concerned, PW-8 is yet to appear before the Court and definitely an opportunity must be given to the applicant/accused to cross-examine said PW-8. On application by the applicant/accused for recalling PW-9 for cross-examination, appropriate orders shall be passed by the trial Court in order to see that all the opportunities are available to the applicant/accused to put forth his case and to see that he is in a position to raise his defence effectively. Still at the cost of repetition it must be stated that there is no need to transfer the present matter at this stage to another Sessions Court. Hence, present application is accordingly dismissed and disposed of with above directions as to opportunity be given to the

applicant/accused to cross-examine PW-8 and PW-9 in accordance with law. With these directions present application is disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)

Certified to be true and correct copy of the original signed order.