

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3922 OF 2015

Dr. Manmath Bandappa Swami	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

Mr. Prakash Naik i/b. Ms. Vrishali Raje, Advocate, for the petitioner
Ms. A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 5th October, 2015.

P.C.

Heard the learned counsel for the petitioner and the learned
APP.

2. The petitioner herein, being aggrieved by the order passed by the Addl. Sessions Judge, Palghar, dated 15.7.2015, thereby permitting the prosecution to examine three witnesses, has filed the present petition.

3. The incident is dated 30.1.2005. On 1.9.2005, Dr. Dinkar Dashrath Marulkar who was posted as Civil Surgeon at Alibag, Raigad has lodged a report on the basis of a news item which was published in Weekly "Dawandi" at Dahanu. On the basis of the said report, the present petitioner, who happens to be a medical practitioner by profession, is being tried for an offence punishable under Section 376 of IPC. The trial has

commenced in the year 2012. The substantive evidence of the victim was recorded on 18.9.2012. The victim has specifically admitted in the cross-examination that she does not know Shilpa Shashikant Patil and Madhubala Mani who were working as Nurses in the hospital of the petitioner.

4. On 17th December, 2014, the prosecution filed an application before the learned Sessions Judge requesting the Court to permit the prosecution to examine Shilpa Patil, Madhubala Mani and Smt. Mana Laxman Kadu. It was stated by the prosecution that looking into the evidence of the other witnesses examination of the proposed witnesses is to be recorded. It is pertinent to note that no reason or ground on which the said witnesses were to be examined was stated before the Court. It is further pertinent to note that on 3.12.2014, the prosecution had filed a Poursis before the learned Sessions Judge in respect of “evidence closed”. The learned Sessions Judge by an order dated 15.7.2015, has allowed the prosecution to examine the said proposed witnesses on the ground that under Section 311 of Cr.P.C. the Court at any stage of the trial may summon any person as a witness or recall and examine any person if his evidence appears to be essential to the just decision of the case.

5. In the present case, the prosecution had not recorded the statement of the proposed witness No.3 under Section 162 of Cr.P.C. The list of witnesses along with the charge-sheet had shown the name of Shilpa S. Patil, and Madhubala Mani. However, at that stage, the prosecution had not applied its mind and had not proposed to examine the said witnesses. Moreover, the victim has specifically stated that sisters were not present at the time of the incident in the hospital as it was a Sunday. That unless a case is made out for examining a witness to substantiate a particular allegation or to throw light on the facts of the case, it would be an abuse of process of law to permit the prosecution to examine the witnesses after filing the evidence closed pursis. Moreover, this Court cannot be oblivious of the fact that the incident is dated 30.1.2005, FIR is lodged by a third person on the basis of the news report on 1.9.2005 i.e. practically after 8 months. The trial has commenced in 2009. The witnesses are being examined since 2012.

6. It is further pertinent to note that PW-1 was cross-examined by the accused. Inherent material omissions and contradictions are brought on record which go to the root of the matter and in view of this, it would not be appropriate to permit the prosecution to examine additional witnesses at

that belated stage. In a trial for an offence punishable under Section 376 of IPC, the substantive evidence of the victim would be of utmost importance and in fact that would be the only evidence which can be relied upon by the Court.

7. It is pertinent to note that the prosecution had failed to demonstrate as to how the evidence of the proposed witness was relevant for the just decision of the case. The prosecution had also failed to demonstrate the nature of evidence to be adduced through the proposed witness. The application was filed at a belated stage without demonstrating the reason for not summoning the proposed witnesses before filing "Evidence Closed" Pursis. The determinative factor under Section 311 Cr.P.C. Is whether the summoning of witness is essential to the just decision of the case. Whenever an application is made for examining any witness at a belated stage, it is incumbent upon the Court to give careful and anxious consideration to it and ponder over the seriousness of the offence as to whether the proposed witness is a material witness and what would be the impact of non-examination of the proposed witness. In the present case, the victim has admitted that the proposed witnesses were not present in the hospital on the date of incident and hence they would not be able to throw light on the prosecution case.

the corroborative material need not be taken into consideration.

8. In view of this, the order dated 15.7.2015 passed by the Addl. Sessions Judge, Palghar, deserves to be quashed and set aside. The learned Sessions Judge shall proceed with the further stage of the trial in accordance with law without being influenced by the observations made hereinabove, which are restricted to examination of additional witnesses after filing the evidence closed pursis.

9. Writ Petition is allowed in the above terms. Rule is made absolute and stands disposed of.

(SMT.SADHANA S.JADHAV, J.)

CERTIFICATE

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