

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 578 OF 2014
IN
CRIMINAL WRIT PETITION NO. 1268 OF 2014

Vellukatti Ulhannan Seemon .. Applicant

Versus

The State of Maharashtra .. Respondent

Ms. Vrishali R. Raje , Advocate for the applicant
Mr. D. R. Patil, APP for the respondent-State.

CORAM:-M.L. TAHALIYANI,J.
DATED : -04/02/2015

P.C.

Heard the learned counsel for the applicant and
learned APP for the respondent State.

2 The applicant is facing trial for the offences
punishable u/s 420 & 406 of IPC in RCC No. 62/2000, pending in
the Court of J.M.F.C., Pune. It is a police case. The evidence of
prosecution has been completed. The statement of the applicant has
also been recorded u/s 313. The applicant has examined three
witnesses including himself in his defence. The evidence of

applicant was over on 25th of November, 2014. Thereafter an application was made by the prosecution to recall DW No. 3 (applicant). The said prayer was granted on 12th of December, 2014. The applicant could not appear though he was summoned by the Magistrate, as he was hospitalized. An application for adjournment was made on behalf of the applicant (accused) which was rejected by the Magistrate on same day. At a later date an application was made by the prosecution to discard the evidence of the applicant (DW No. 3) on the ground that he was avoiding to appear before the Court for further cross-examination. It was submitted before the Magistrate that his evidence could not be read as his evidence was not completed. It was urged before the Magistrate that without further cross-examination, the evidence could not be said to be a complete evidence. The Magistrate accepted the arguments and passed the order below Exh.-632, directing that the evidence of DW No. 3 (applicant) would be discarded.

3 This criminal application has been filed to challenge the order passed by the Magistrate, granting prayer of recall of DW No. 3 and rejecting the prayer of applicant for adjournment. While

the present application was pending before this Court an order came to be passed by the learned trial Magistrate directing that the evidence of DW No. 3 be discarded. Therefore, the present petition has been amended and copy of the impugned order passed by the Magistrate on 20th of December, 2014 is furnished by the applicant. Before examining the order passed below Exh.-632, it will be necessary to examine whether the order dated 12th of December, 2014 recalling DW No. 3 was just and proper.

4 In the first place the order of the Magistrate itself shows that the prosecution has not placed anything before the Magistrate as to on what point the witness was required to be cross-examined further. Secondly the Magistrate did not give opportunity to the applicant of being heard before passing the order of recall of DW No. 3/applicant. In my opinion, considering the nature of the offences and considering the fact that the hearing of the case had reached an advanced stage, the Magistrate should not have passed such a casual order. He should not have recalled DW No. 3 unless he was satisfied that his further cross-examination was necessary for the fair trial and in the interest of justice. It is the case of the

applicant that serious prejudice has been caused to him as he was not allowed to address the Court on the application moved by the prosecution for recall of DW No. 3. To my mind the grievance of the applicant is genuine and needs to be redressed.

5 The order passed by the Magistrate on 12th of December, 2014 directing the recall of DW No. 3 needs to be set aside. The further prayer for setting aside the order below Exh.-632 also does not survive. Hence I pass the following order:

(a) Criminal Application No. 578 of 2014 is partly allowed. The order passed by the Magistrate for recall of DW No. 3 is set aside.

(b) The learned Magistrate is directed to give opportunity to the applicant of being heard.

(c) In view of this order, the further prayers of the applicant do not survive.

(d) I am told that RCC No. 62/2000 is on the board of Magistrate on 5th of February, 2015. In view of the present order, the Magistrate shall not take further steps in the case, unless he receives the present order and shall act in accordance with the order

passed by this Court.

(e) The application stands disposed of accordingly.

(JUDGE)

md.saleem