

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1324 OF 2015

Sumitkumar Yadav & Ors.	...	Applicants
Vs.		
The State of Maharashtra	...	Respondent

Mr. S. R. Chitnis, Sr. Adv. a/w. Mr. Nitin Tejpal, Adv. a/w. Mrs. Pooja Bhojane, Adv. for the applicant.
Mrs. G.P. Mulekar, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 15th December, 2015.

P.C. :

1. This is an application under Section 482 of the Cr.P.C. challenging the order 3rd December, 2015 passed in Sessions Case. No.786 of 2014 whereby the learned Addl. Sessions Judge dismissed the application filed by the aforesaid applicants / accused for issuing summons to the defence witness.

2. The brief facts necessary to decide this application are that the applicants herein are facing trial for offences punishable under Sections 302, 304(b) and 498-A r/w. Section 34 of the IPC. The prosecution in support of its case has examined 26 witnesses. The statement of accused was recorded under Section 313 of Cr.P.C. The learned counsel for the applicant concedes that the names of the

witnesses were not given. However, subsequently an application was filed an undated copy of the same is placed on record at page 28 wherein the names of 28 witnesses were given. Out of these 28 witnesses 26 witnesses have been examined, the names of two defence witnesses were given in another undated application, copy of which is placed on record at page 34. The learned Trial Judge had allowed the applicant to examine said witnesses. Accordingly said witnesses have also been examined. By way of another undated application filed in 2015, copy of which is placed on record at page 36 names of 7 other witnesses were given, with a request to summoned the said witnesses. The learned Trial Judge has rejected prayer of the applicants / accused to summon the said witnesses.

3. The learned counsel Shri Chitnis has submitted that Madhu had expired within one year of marriage and the applicant / accused could rebut the presumption of dowry demand only by proving that the applicant / accused are in sound financial position and had incurred expenses for the luxurious life style of the deceased. The learned counsel for the applicant has submitted that the learned Judge has erred in holding that the applicants were delaying the trial. The learned counsel has submitted that the impugned order is against

the concept of equity and fair trial.

4. The learned APP has submitted that the applicant has already examined 14 witnesses. The learned APP has further submitted that the Apex Court while releasing the accused No.3 on bail has expedited the trial. The learned APP has further submitted that the applicants are only trying to delay the proceedings and as such the learned Judge was perfectly justified in rejecting the application.

5. I have perused the records and considered the submissions advanced by Mr. Chitnis, the learned counsel for the applicant and Mrs. Mulekar, the learned APP.

6. At the outset, it may be mentioned that Section 233 of Cr.P.C. mandates that when the accused is not acquitted under Section 232, for want of evidence, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. Sub section (2) of Section 233 contemplates filing of the written statement whereas sub-section (3) stipulates that if the accused applies for the issue of any process for compelling the attendance of

any witness or the production of any document or thing the judge shall issue such process unless he considers for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexatious or delay or for defeating the ends of justice.

7. A plain reading of this provision makes it absolutely clear that though the section is imperative and the accused has right to summon any evidence, the Judge has discretion to refuse such process to any witness, if he is satisfied that the application is vexatious or is made to delay or defeat the ends of justice.

8. In the instant case, the records reveal the applicants herein are charged for offences under Sections 302, 304(b) and 498-A r/w. Section 34 of IPC. The applicants / accused having pleaded not guilty, the prosecution adduced evidence of 26 witnesses in support of its case. The statements of the applicants / accused were recorded under Section 313 of Cr.P.C. and they were called upon to enter their defence under Section 233 of Cr.P.C. The learned counsel for the applicant has conceded that though the applicants / accused had expressed their desire to examine defence witness, they had neither

given the names of the witnesses nor applied for the issue of process to summon the witness or to produce any documents.

9. The applicants / accused had put in their written statement. The petitioner No.1 thereafter examined himself and filed an application in October, 2015 to summon in all 27 witnesses. Amongst these witnesses, the applicants / accused had prayed to summon photographer of Colo Lab, Superintendent, Regional Passport Office, representative of jewelery shops, representative of Consulate General of Singapore, Officers of ICICI, IDBI and State Bank of India, Credit Card Division, Kotak Mahindra Bank, etc. The applicant had filed another application to examine one Mahesh Tamhankar.

10. The applicant examined 14 witnesses and in the month of December, 2015 the applicant filed another application to summon seven more witnesses which include Income Tax Authority, Jt. General Manager and Officers of ICICI Bank, officers of Make My Trip, officer of M/s. Sai Travels etc. The learned Judge has rejected the application mainly on the ground that the witnesses are not relevant and the application was filed only to delay the proceedings.

11. A plain perusal of the lists filed by the applicants indicate that they have sought to summon several officers, managers and several other authorities including representative of Consulate General of Singapore, without giving any cogent reasons for examining them as witnesses. It need not be emphasised that the expression 'any witness' in sub-section (3) of Section 233 does not mean all and sundry, but means 'any witness' whose evidence is relevant for the just decision of the case. The applicant / accused has not shown that the witnesses sought to be summoned were relevant either to establish the defence, to rebut the presumption or to disprove the prosecution case.

12. It is also pertinent to note that the Apex Court has expedited the trial of the case. The learned Judge had been conducting the trial on day-to-day basis. In ground (1) the applicants have claimed that the counsel for the applicants is appearing before different courts and that he had pointed out to the Judge that it would not be possible for him to conduct the case on day to day basis despite which the Judge had expedited the trial and had called upon the defence counsel to appear and produce defence witnesses on day to day basis. The grounds raised in this application indicate that the

applicants were aggrieved by the fact that the learned Judge was taking up the case on day to day basis, which is otherwise the requirement of law. This fact coupled with the fact that the applicants were making piecemeal requests to summon almost every authority, without specifying the relevancy, only indicates that the applicants were only interested in delaying the trial. The learned Sessions Judge was therefore perfectly justified in rejecting the application.

13. Under the circumstance and in view of the discussion supra, the application has no merits and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)