

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 9 OF 2016

The State of Maharashtra
through PSO Bhagyanagar Police
Station, Nanded

... Applicant
(Ori. Respondent)

Versus

1. Mirza Anwar Baig Ahmed Baig
Age: 42 years,
R/o: Daveshnagar, Nanded
2. Rahemankhan Yusuf Khan
Age: 40 years,
R/o. Umar Colony, Nanded
3. Gousiya Raheman Khan
Age: 40 years,
R/o. Osmanpura, District Nanded

... Respondents
(Ori. Accused)

.....
Mr. G. O. Wattamwar, Assistant Public Prosecutor for applicant
Mr. Rahemankhan Yusuf Khan (respondent No.2) Party-in-person
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 11th MARCH, 2016

ORAL JUDGMENT :

1. Despite service, no appearance is caused on behalf of respondents No. 1 and 3.

2. Rule. Rule made returnable forthwith and heard finally with consent of learned Assistant Public Prosecutor and party-in-person.

3. This revision application has been moved by the State for quashing of order dated 06-11-2015 on Exhibit-136 in Sessions Case No. 90 of 2013 passed by Ad-hoc Additional Sessions Judge, Nanded, whereby request of the prosecution seeking to call witnesses Mr. S. P. Nandanwankar who has conducted partial investigation and Mr. S. K. Bendali, Medical Officer who has conducted the postmortem for examination, has been turned down.

4. Application Exhibit-136 purportedly has been moved under Section 311 of the Criminal Procedure Code. The prosecution had earlier on made a similar application seeking to call aforesaid witnesses for examination before the court. Though several opportunities were given the prosecution failed to examine the aforesaid witnesses. The evidence was closed and the matter was posted for recording of statement of the accused under section 313 of Criminal Procedure Code. At this stage, application Exhibit-136 was moved by the prosecution which was resisted by accused No.2 by filing say referring to that application filed by the prosecution summoning the witnesses

had been rejected earlier on by the court and no new ground is made out in the present application.

5. The trial court vide order dated 06-11-2015 rejected the application Exhibit-136 observing that similar application was moved earlier on by the prosecution which was rejected and no new ground is made out in the application and despite being given several opportunities the prosecution failed to examine the witnesses. The trial court further observed that time limit of two months is given by the High Court to dispose of the case.

6. However, considering the fact that these two witnesses may be material and their evidence may be necessary to reach a just conclusion and that the revision application is not seriously resisted by accused No.2 and non appearance of accused No. 1 and 3 to some extent indicates that they do not want to resist the application, I deem it appropriate and expedient to allow the criminal revision application in the interest of justice.

7. Having regard to aforesaid, the criminal revision application is allowed in terms of prayer clause (C) and disposed of. Rule is made absolute accordingly. As such, application Exhibit-136 shall be considered to have been allowed.

8. At this stage, party-in-person – respondent No.2, earnestly requests that the trial may be expedited.

9. Having regard to that the case is of 2013, it would be expedient that Sessions Case No. 90 of 2013 be taken up for expeditious disposal and be dealt with and dispose of in accordance with law, preferably within a period of one month from the date of receipt of writ of this order.

(SUNIL P. DESHMUKH, J.)

sms