

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.501 OF 2016

KHAJA SAB S/O ABDUL SAB SHAIKH

PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND
OTHERS

RESPONDENTS

Mr.C.R.Deshpande, Advocate for the petitioner.
Mr.S.G.Karlekar, APP for respondent No.1/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/06/2016

PER COURT :

1. The petitioner is aggrieved by the order dated 14/02/2013 by which application Exh.134 filed u/s 311 of the Cr.P.C. for examining Dr.Sudhakar Gulwe, the Medical Officer, has been rejected. The petitioner is also aggrieved by the judgment of the Revisional Court dated 25/02/2016 by which his criminal revision application has been dismissed.

2. I have heard the strenuous submissions of Mr.Deshpande, learned Advocate for the petitioner and the learned APP on behalf of respondent No.1. With their assistance, I have gone through the petition paper book as well as the examinations and cross examinations of the Investigating Officer, Dr.Dhavale and the petitioner victim himself.

3. Grievance is that when the medical record by way of a provisional diagnosis indicates an head injury with other multiple injuries to the petitioner/victim, it is necessary to examine Dr.Gulwe who has signed the medical case record in his capacity being an Orthopedic Surgeon in the District Hospital, Latur.

4, Mr.Deshpande has further submitted that the prosecution has still not filed a closing evidence purshis though the roznama of the proceedings indicates that the stage was set for recording the statement of the accused u/s 313 of the Cr.P.C. He, therefore, submits that an application u/s 311 of the Cr.P.C. was rightly filed by the victim petitioner. Both the Courts below have declined to consider the application on the ground that it has been belatedly filed and on the ground that the testimony of Dr.Gulwe is not germane to the cause of action.

5. Mr.Deshpande has submitted that evidence cannot be curtailed, especially in criminal proceedings. No loss or harm would be caused to the accused. Per contra, denial of an opportunity would weaken the case of the petitioner and the accused may unduly derive an advantage from such situation.

6. In so far as the submissions of Mr.Deshpande are concerned, there cannot be a debate. However, merely because an application u/s 311 of

the Cr.P.C. has been filed, the Court is not expected to blindly allow the application on the ground that evidence should not be curtailed. Each of such applications has to be considered in the light of the available material so as to conclude as to whether rejection of such application would prevent the victim or the prosecution from establishing the case against the accused.

7. In the instant case, the accused is being tried for offences committed u/s 323 and 324 of the IPC. Causing physical grievous injuries by the use of weapons, is to be proved.

8. The prosecution has examined the Investigating Officer as well as the petitioner victim. The Investigating Officer has stated that there was no head injury to the petitioner. Dr.Dhavale, who has medically treated the petitioner after he was referred for treatment upon suffering injuries, has stated in his deposition that there was no head injury.

9. The petitioner has relied upon the medical case record and has indicated that the provisional diagnosis mentions head injury with multiple injuries. I find from the said report that the final diagnosis which the petitioner may have lost sight of, does not mention any head injury. What is crucial is that Dr.Dhavale has prepared the entire clinical notes and the treatment made available to the petitioner/victim. He is

the scribe of the said document. He has noted every injury caused to the petitioner. His clinical notes and the treatment indicates that there was no head injury.

10. It is also vital to consider as to what was the deposition of the petitioner before the Trial Court so as to assess as to whether the testimony of Dr.Gulwe would be crucial or not. Mr.Deshpande has tendered across the bar the deposition of the petitioner. In his deposition, he has mentioned several injuries caused to him as well as the weapons used for causing such injuries. He has, however, not stated that he has suffered any head injury. Had he indeed suffered the head injury, the clinical notes and the treatment given would have also indicated that the petitioner had head injuries and he was treated for the same.

11. It is, in the light of the above, that the Trial Court as well as the Revisional Court have concluded that the testimony of Dr.Gulwe is of no consequence. I, therefore, do not find that the impugned orders could be termed as being erroneous or perverse.

12. As such, this petition fails and is therefore dismissed.

(RAVINDRA V. GHUGE, J.)