

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2086 OF 2016
IN
CRIMINAL WRIT PETITION NO. 1471 OF 2015

Sanjay Kanhaiyalal Debra

Applicant

VERSUS

State of Maharashtra and Another

Respondents

Mr. Aditya Gore, Advocate h/f Mr. B. K. Patil, Advocate for the
Applicant.

Mr. N. T. Bhagat, APP for Respondent No.1/State.

Mr. A. S. Barlota, Advocate for Respondent No.2.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/06/2016

PER COURT :

1. The petitioner has moved this court for seeking extension of time, in order to examine two witnesses through the prosecution, as has been granted by this Court vide its order dated 19.01.2016 in Criminal Writ Petition No.1471 of 2015.

2. I have heard Mr.Gore, learned Advocate for the Applicant/petitioner, the A.P.P. for the respondent No.1/ State and

Mr.Barlota, learned Advocate on behalf of respondent No.2.

3. The issue is as regards the trial pending before the learned Judicial Magistrate First Class, Aurangabad in RCC No.288 of 2006. This Court by its order dated 19.01.2016 had directed the issuance of fresh summons to Dr.M.G.Menon, who is said to be a Neurosurgeon working at the Kamalnayan Bajaj Hospital, Aurangabad and Mr.Sandeep Bajaj, who is a resident of United States of America. These two witnesses are sought to be examined by the prosecution and it has spent approximately two years, but in vain. Mr. Sandeep Bajaj is an eyewitness to the incident. Dr.Menon is said to be the Medical Practitioner who had attended to the injuries of the applicant in his hospital.

4. In so far as the examination of Mr.Ajay Talreja and Mr. Arjundas Motwani is concerned, this Court has concluded in paragraph No.9 of its order dated 19.01.2016, that the testimony of Mr. Ajay Talreja and Mr. Arjundas Motwani are not material to the prosecution case. Both are not the eyewitnesses to the incident and

their testimony is in the nature of “hearsay”.

5. Considering that Mr.Bajaj is an eyewitness to the incident and Dr.Menon, is said to have treated the applicant after he suffered assault injuries, this Court allowed the Criminal Writ Petition in part by passing the following order :-

ORDER

- i) The Criminal Writ Petition is partly allowed.
- ii) The order dt. 25.08.2015 passed by the learned Sessions Judge in Criminal Revision No.181 of 2015 is hereby partly set aside.
- iii) The order dt. 06.10.2015 passed by the learned Judicial Magistrate First Class, below Exh.48 is also hereby partly set aside.
- iv) It is hereby directed that, fresh summons be issued to Dr. M.G. Menon and Sandeep bajaj. Hamdast of the same be granted to the writ petitioners/complainant.
- v) The evidence of these two witnesses be concluded by the prosecution within a period of two months from the date of this order. Upon failure, the order of the learned Judicial Magistrate First Class passed below Exh. 48, to stand.

6. The applicant submits that despite his best efforts Dr. Menon

has virtually declined to remain present in the Trial Court and so also Mr.Bajaj. Since the time of two months granted by this Court ended on 18.03.2016, the applicant has preferred this application on 11.04.2016, seeking extension of time.

7. Shri Gore, therefore, submits that an extension of three months would not cause any hardship to the respondents. The applicant has no intention to delay the matter and as it is not in his interest. If the prosecution fails to examine Dr. Menon and Mr.Bajaj, it is likely to be fatal to the case of the prosecution. Being the informer of the F.I.R., which has set the process of law in motion, the applicant has a limited scope in the trial and can not transgress his limits as may be prescribed by law in ensuring the presence of Dr.Menon and Mr.Bajaj. It is, however, assured that a necessary application would be made before the Trial Court forthwith in order to have Dr. Menon and Mr.Bajaj examined.

8. Mr.Barlota, learned Advocate appearing on behalf of respondent No.2, has strenuously opposed this application. His

contention is that it was the applicant who had made a statement as is recorded in paragraph No.8 of the order of this Court dated 19.01.2016 that though Mr.Bajaj is residing in U.S.A., the applicant would ensure that Mr.Bajaj would be examined, if summoned, in near future. Despite this, the applicant moved an application on 29.01.2016 below Exh.52 mentioning the address of Mr.Bajaj as resident of Flat No.201-A, New Shantisagar Society, Near New Telephone Exchange, Ulhasnagar-1. Mr.Barlota, therefore, submits that a conscious effort was made by the applicant to mislead the Trial Court and it was only a pretense that the applicant has tried to serve Mr.Bajaj.

9. Mr.Barlota further submits that by application dated 23.02.2016 the applicant once again mentioned the address of Mr.Bajaj as noted above and the summons were got issued at his address at Ulhasnagar. Practically, 45 days were lost in this exercise which was specifically at the behest of the applicant. It is only when 60 days time limit was about to expire that the applicant put forth an application on 10.03.2016 seeking leave to examine Mr.Bajaj through

Video Conferencing.

10. Mr. Barlota submits that his client, who is an accused is about 70 years old today. The pressure and tension of litigation is affecting his health. The conduct of the applicant disentitles him to any extension. In the event this Court is inclined to grant any extension, same should be under stringent conditions and by imposing heavy costs on the applicant which should be donated to the District Legal Services Authority, Aurangabad.

11. The learned A.P.P. has adopted the submissions of Mr.Barlota and has contended that this application deserves to be rejected.

12. Shri Gore learned Advocate has made a valiant attempt to convince me that the applicant had no intention of wasting time or misleading the Trial Court by giving the Ulhasnagar address of Mr.Bajaj. Notwithstanding Mr.Gore's strenuous submissions, I am not convinced that the applicant has very innocently mentioned the Ulhasnagar address on 29.01.2016 after his statement was recorded

in the order of this Court dated 19.01.2016 that Mr.Bajaj resides in U.S.A..

13. Considering the above and with an intention of ensuring that an eyewitness to the incident and a doctor who has treated the victim, be brought before the Trial Court for recording evidence, that I am granting a last opportunity to the applicant by extending time by two months and by imposing costs of Rs.10,000/- (Rupees Ten Thousand) which shall be deposited by the applicant before the Trial Court so as to be transmitted to the District Legal Services Authority, Aurangabad.

14. In the light of the above, this application is partly allowed. Time to examine Dr.M.G.Menon and Mr.Sandeep Bajaj is extended by two months w.e.f. 23.06.2016 which is the next date of hearing before the Trial Court. The applicant as well as the learned A.P.P. representing the prosecution in the said matter are at liberty to make an application to the Trial Court for initiating coercive steps as per law to ensure the presence of Dr.Menon. The Trial Court shall

accordingly exercise it's powers for the said purpose.

15. I find that an application Exh-56 dated 10.03.2016 seeking permission to examine Mr. Bajaj through Video Conference is pending. The Say has been already filed by the accused on 07.04.2016 at Exh-58. The Trial Court shall therefore, hear the respective sides on Exh-56 on 23.06.2016 and pass necessary orders.

16. It is made clear that in the event the applicant and/or the A.P.P. fail in their efforts in getting Mr.Bajaj and Dr.Menon before the Trial Court within a period of sixty days as is granted by this order, the Trial Court shall thereafter, proceed with the matter in accordance.

17. The applicant, namely, Mr. Sanjay Kanhaiyalal Debra, shall deposit an amount of Rs.10,000/- (Rupees Ten Thousand) with the Trial Court and the learned Magistrate shall thereafter, transmit the said amount to the District Legal Services Authority, Aurangabad.

18. It is made clear that no further application for extension of time on this issue shall be entertained.

19. The parties to act on the printout of this order obtained from the Official Website of the High Court of Bombay.

(RAVINDRA V. GHUGE, J.)