

CRIMINAL WRIT PETITION NO. 1077 OF 2016
WITH
CRIMINAL WRIT PETITION NO. 958 OF 2016

VERSUS

Rahul Vinayak Joshi & anr. ...Respondents

.....
Shri N.T.Bhagat, A.P.P. for petitioner
Shri S.M.Kulkarni, advocate for respondent nos. 1 and 2
.....

CORAM : N.W.SAMBRE, J.

DATED : 28th September, 2016

PER COURT :-

In Sessions Case No. 65 of 2014, application Exh. 133 came to be moved under Section 311 of the Code of Criminal Procedure, for issuance of notice to the Nodal Officer of Tata Telephone Services and Uninor Telephone Services.

2. The said application came to be rejected by the Additional Sessions Judge, Jalgaon, vide

order dated 1.6.2016, on the ground that the Court was not satisfied as regards genuineness and the cause for which the summons were to be issued to the Nodal Officer, Telepone Companies. The learned Sessions Judge then observed that the prosecution has already examined 22 witnesses to prove the circumstantial evidence against the accused persons and is trying to create new evidence by moving the application in question.

3. While questioning the orders, the learned A.P.P. would urge that it is the principle of criminal law that fair opportunity is also required to be given to the prosecution and is not restricted only to the defence. The learned A.P.P. then urged that the case of the prosecution is based on circumstantial evidence and law contemplates that such evidence is to be scrutinized with great care and caution. He would then urge that to complete the chain of the circumstances, the evidence of Nodal Officer is very much necessary, so as to establish the guilt

of respondents/accused beyond reasonable doubt. As such he would then submit that the application ought to have been allowed.

4. Shri Kulkarni, learned counsel for respondents/accused would urge that if application Exh.133 moved under Section 311 of the Code of Criminal Procedure is perused, it is required to be noted that the same has been moved at belated stage, that too without furnishing any grounds, much less which are germane to the cause. He would then urge that in the trial, fair opportunity needs to be given to the prosecution but that does not mean that the provisions of Section 311 of the Code of Criminal Procedure would be stretched to such an extent that even an irrelevant evidence should be permitted to be brought on record.

5. Having bestowed my thoughts to the submissions made, it is required to be noted that the law qua exercise of powers under Section 311

of the Code of Criminal Procedure is well settled. Such powers could be exercised for just decision of the case and to give fair opportunity to both the prosecution and the defence. In the present case, the prosecution case appears to be that on 8.12.2013 Shahrukh Patel was murdered and mobile in question was given to Rahul by accused Pravin. IMEI number along with CDR reports is already brought on record. Since the case is based on circumstantial evidence, in my opinion, application Exh. 133 ought to have been allowed by the learned Additional Sessions Judge so as to give fair opportunity to the prosecution to bring on record the evidence, which upon evaluation could be material.

6. Apart from above, what is required to be noted is, the foundation for examination of the said Nodal Officer was also laid, as during evidence the mobile instrument in question along with the details of operation of sim card are also brought on record by the court below.

7. As such, the order impugned, in my opinion, is not sustainable. Hence, the present Petition needs to be allowed.

8. The order impugned passed below Exh.133 in Sessions Case No. 65 of 2014 is hereby set aside and the application Exh.133 stands allowed.

9. Criminal Writ Petition No. 1077 of 2016 stands allowed in above terms.

10. In view of above order, Criminal Writ Petition No. 958 of 2016 no more survives and same stands disposed of.

(N.W.SAMBRE, J.)

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