

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

Criminal Writ Petition No. 1352 of 2016

District : Aurangabad

Habeeb s/o. Chandulal Tamboli,
Age : 67 years,
Occupation : Pensioner,
Residing at Silkmill Colony,
Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
through the Superintendent of
Police, ACB,
Jalna.

.. Respondent no.1.

2. Mr. U.R. Telgaonkar, Esquire,
The Special Judge,
PC Act, Aurangabad.

.. Respondent no.2
deleted.

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Mr. Hemant Surve, Advocate, for the petitioner.

*Mr. K.N. Lokhande, Addl. Public Prosecutor, for
respondent no.1.*

Respondent no.2 deleted.

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CORAM : Z.A. HAQ, J.

DATE : 30TH NOVEMBER 2016

ORAL JUDGMENT :

Heard Adv. Mr. Hemant Surve for the petitioner, and APP Mr. K.N. Lokhande for respondent no.1 - State of Maharashtra.

The learned Advocate for the petitioner, on instructions, seeks permission to delete the name of respondent no.2 from the cause title and also all adverse allegations made against Presiding Officer in the body of Writ Petition.

Permission granted.

02. Rule. Rule made returnable forthwith.

03. The petitioner has assailed the order passed by the learned Special Judge on 01st July, 2016 by which the petitioner is directed to pay Rs. 01,000/- to the witness from Pune and Rs. 02,000/- to the witness from Palghar, while allowing the application filed by the petitioner praying that the order passed on 02nd of May, 2016 to proceed with the matter without cross examination of the witness on behalf of the accused be set aside. The petitioner has also assailed the order passed by the learned Special Judge imposing costs of Rs. 10,000/- for granting prayer of the petitioner (accused) to recall the witness for cross-examination.

04. Though the impugned orders cannot be said to be unjust or improper in the background as recorded in the orders, in my view, interests of justice would be sub-served by passing the following order :-

(a) The learned Special Judge shall recall the witness [PW 2 - Mahendra Bhokre] to enable the accused to cross examine him. The opportunity is given to the accused as last chance and subject to depositing Rs. 2,000/- towards the expenses in the matter.

(b) If the accused fails to deposit the amount of Rs. 2,000/- with the Sessions Court within one month and / or fails to cross examine the witness on the date on which the witness remains present, the accused will lose the opportunity and the learned Special Judge will proceed further according to law.

(c) The directions given by the learned Special Judge to the accused to pay costs of Rs. 10,000/- for recalling the witness are set aside.

(d) The impugned order dated 01st July, 2016 is not interfered with and is maintained.

(e) The impugned order dated 18th August, 2016 is modified as above.

(f) Rule is made absolute in the above terms. In the circumstances, parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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