

CORAM : M.T. JOSHI, J.
DATE : 21/01/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides.

2. Aggrieved by the rejection of the application by the learned Additional Sessions Judge, Bhusawal vide order dated 15/10/2015 in Sessions Case No. 312 of 2014, thereby refusing to call the two witnesses on the application of the complainant/petitioner, the present writ petition is preferred.

3. The present petitioner is the complainant in the case. It is an admitted fact that the Sessions case is at the fag end. Two of the witnesses, who were claimed to be the eye witnesses, those were examined by the prosecution, had turned hostile and did not support the prosecution. Therefore, earlier, the present petitioner had filed similar application at Exhibit 62 on 05/11/2014 for calling one Shaligram Zago Beldar and Ratiram Tulshiram Beldar, as the eye witnesses.

. The said application was allowed by the learned Sessions Court, Bhusawal vide order dated 10/12/2014.

4. Aggrieved by the said order, the original accused i.e. the respondents 2 to 5 herein had preferred Criminal Writ Petition No. 9 of 2015 in this Court. This Court, vide order dated 5th August, 2015 allowed the Writ Petition for the reasons as below :

"[4] At such belated stage, the application under Section 311 of the Code of Criminal Procedure is filed by Respondent No.2. Said application was not moved by the learned Public Prosecutor. The said application is at Exhibit - 62. From the said application, it is clear that the persons who are intended to be examined as eye witnesses, their statements are not recorded by the Investigating Officer, during the course of investigation. Further their names are also not cited as witnesses in the charge sheet. The application is conspicuous by its absence in not giving any reasons as to how the testimony of those two persons will be relevant in dispensation of justice. Further, though the said application was objected by the petitioners, impugned order dated 10th December, 2014 shows total non application of mind, even on the part of the learned Judge of the court below and no reasons are given, as to how evidence of those two persons would be necessary for the fair trial and just decision of the matter."

5. Thereafter, the petitioner i.e. the complainant again moved the application at Exhibit 93 on 24/08/2015, in which the impugned order is passed. By this

application, the complainant has again asked for issuing witness summons to the very same witness Shaligram Zago Beldar and another person i.e. Shehsrao Sukdeo Ghate, who was not included in the earlier application. The said application is signed by the learned A.P.P.

6. The petitioner had annexed to the present writ petition, certain papers i.e. statement of those two witnesses and the affidavit of those two witnesses filed in the Sessions Court.

7. Upon query, Mr. Bhokarikar, learned counsel for the petitioner took me through the deposition of the present petitioner, who is the complainant in the case. Deposition dated 24/09/2014 would show that one Yuvraj Shankar Beldar and Sunil Narayan Mahajan (not the present proposed witnesses) came to the house of the present applicant and told about the incident. Further, the said deposition does not show that at any point of time, those proposed witnesses had told the present petitioner / complainant that they had seen the incident.

8. In the circumstances, though, the present application is now signed by the learned A.P.P., there is no difference in the situation than the situation that had arisen earlier when this Court had an occasion to deal with the similar situation.

9. It is further to be noted that while in the earlier application one Ratiram Tulshiram Beldar was claimed to be eye witnesses in the present application and the said eye witness is deleted and in his place, now new witness claiming to be an eye witness i.e. Sheshrao Sukdeo Ghate is added.

10. Upon hearing both sides, in my view, there is no force in the writ petition. Earlier application of the petitioner/complainant was dismissed by this Court, finding that the trial is at the fag end. Writ Petition is therefore dismissed. Rule is accordingly discharged.

11. At this stage, Mr. Bhokarikar, learned counsel for the petitioner submits that the Sessions Trial may be stayed, as the petitioner wants to challenge the present judgment and order in the Hon'ble Supreme Court of India.

12. It is an admitted fact that the respondent nos.2 to 5 are the under-trial prisoners. In the circumstances, the prayer made by the learned counsel for the petitioner is refused.

[M.T. JOSHI]
JUDGE

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