

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1471 OF 2015

Shri. Sanjay Kanhaiyalal Debra,
Adult Indian Inhabitant,
Aged – 45 years, Occupation – Business Agril,
Residing at Sindhi Colony,
Aurangabad. .. Petitioner

Vs.

1. The State of Maharashtra,
Through the Office-in-Charge,
Or Police Inspector,
Osmanpura Police Station,
Osmanpura, Aurangabad.
2. Subhash Baliram Kuber,
Adult Indian Inhabitant,
Aged : 64 years, Occupation – Retired,
Residing at Vedant Nagar,
Aurangabad. .. Respondents

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Mr Aditya Gore, Advocate h/f Mr B. K. Patil,
Advocate for the petitioner
Mr R. B. Bagul, APP for respondent/State
Mr A. S. Bajaj, Advocate for respondent No. 2
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CORAM : M.T. JOSHI, J.

DATE : 19/01/2016

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. Heard
finally with the consent of parties.

2. The complainant in R.C.C. No. 288 of 2006 pending on the file of the 15th Court of ld. Judicial Magistrate First Class, Aurangabad, is seeking directions to quash the order dt. 6th October, 2015 passed by learned Judicial Magistrate First Class, Aurangabad, by which he refused to issue summons to the witnesses as mentioned in the application.

3. The chequered history would show that, the criminal case is pending against the present respondent No. 2 for the offence punishable under Section 326 323, 504 of the Indian Penal Code. The witnesses including the complainant were examined. Thereafter vide Exh. 36, two witnesses namely; Ajay Talreja and Arjundas Motwani, requested the Court that they may not be examined as they are not direct witnesses to the said case. The said purshis is signed by the Spl. APP. The learned Judicial Magistrate First Class, Aurangabad accepted the same. Thereafter, the matter proceeded and vide Exh. 45, Asst. P.P. filed an application for issuing witness summons to these very two witnesses and additional two witnesses namely; Sandeep Bajaj and Dr. Menon.

Admitted facts would show that, on three occasions, summons was served on Sandeep Bajaj. The summons to Dr. Menon, however, could not be served as he has left the hospital, where the present complainant was treated by him after receipt of the alleged injuries. In view of these fact, the case proceeded without their evidence, however, when the matter reached to the final stage, the application at Exh. 45 came to be filed. The learned Judicial Magistrate First Class allowed the same. Aggrieved by the said order, respondent No. 2 i.e. accused filed Criminal Revision No. 181 of 2015 challenging the said order of calling the witnesses. In the said revision, the state was the only party. The learned Sessions Judge has allowed the revision and set aside the order of Judicial Magistrate First Class, of calling the four witnesses.

4. Thereafter, the Asst. P.P. again filed an application at Exh. 48 calling the very same witnesses. The learned Judicial Magistrate First Class upon hearing both the sides observed that since the Sessions Court had already dealt with the matter and has set aside the

earlier order, the application cannot be allowed and same was rejected.

5. Aggrieved by both these orders i.e. one in the revision and next in the order passed by the JMFC, the present writ petition is filed by the original complainant.

6. Mr Gore, learned counsel for the petitioner submits that, Sandeep Bajaj is an eye-witness to the incident. Dr. Menon had examined the complainant when he was admitted in his hospital upon receipt of the injuries. He further submits that, though the remaining two witnesses are not eye-witnesses, in fact, one of the witnesses had sold his land to the complainant, which is one of the bone of contention between the parties and in the circumstances, he submits that, since order passed by the Judicial Magistrate First Class earlier of calling of the witnesses was interlocutory order, the learned Sessions Judge ought not to have interfered in the said Criminal Revision as the Criminal Revision itself was not tenable. He further submits that, entire evidence is required to be placed on record.

7. On the other hand, Mr Bajaj, learned counsel submits that, the record would show that Sandeep Bajaj was served with a summons thrice, Dr. Menon could not be served though time and again efforts were made and the said criminal case was dragged since the year 2006. He further submits that, the present writ petition itself is not maintainable at the behest of the complainant. In fact, the application for assisting the learned APP in the criminal case was filed long back in the trial Court and the complainant was aware of all these activities. He further submits that, due to delay in the trial, the accused is suffering and in the circumstances, he submits that the writ petition be dismissed.

8. Learned counsel for the complainant submits that, though Sandeep Bajaj is residing in U.S.A., the complainant would see that he would be examined if summoned in near future. He further submits that, Dr. Menon has returned to Aurangabad and, therefore, it is possible that his evidence would be recorded in the near future. As regards Motwani, he submits that, to prove the motive of the incident, his deposition would be required.

9. Upon hearing both sides, in my view, the examination of Ajay Talreja and Arjundas Motwani is not material to the prosecution case. Ajay is admittedly not the eye-witness to the incident but, his evidence would be only in the nature of hearsay. Arjundas Motwani's deposition also, if examined, would be of minor significance. Sandeep Bajaj, however, is an eye-witness to the incident while Dr. Menon is claimed to have treated the complainant in the hospital. Their evidence before the trial Court would be very material. Learned counsel for the petitioner submits that, Sandeep Bajaj would be produced before the Court by the complainant.

10. Considering all these facts on record and further finding that the present respondent No. 2 is facing the trial since 2006, the following order would meet the ends of justice.

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 Dr. 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.

10. Rule is made absolute in the aforesaid terms.

11. All parties as well as the learned Judicial Magistrate First Class, Aurangabad to act on authenticated copy of this order.

[M.T. JOSHI]
JUDGE