

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.29 OF 2016

Rakesh Kapoor .Petitioner

Vs.

The State of Maharashtra .Respondent

WITH

CRIMINAL APPLICATION NO.335 OF 2016

IN

WRIT PETITION NO.29 OF 2016

M/s. Khandelwal Laboratories Pvt. .Petitioner
Ltd.

IN THE MATTER BETWEEN

Rakesh Kapoor .Petitioner

Vs.

The State of Maharashtra .Respondent

Mr.V.P.Bajpai a/w. Mr. Swapan Samadani i/b.
M/s.G.S.Mansawala & Co., Advocate, for the
Petitioner

Mr.J.S.Kini i/b. Mr.Suresh Dubey, Advocate, for
the Petitioner

Ms Pallavi Dabholkar, APP, for the Respondent –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 04.10.2016

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 01.12.2015 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay, below Exh.7 in Cri.Appeal No.317 of 2012.

3. Learned counsel for the Petitioner states that the learned Sessions Judge has neither rejected nor granted the Application (Exh.7), preferred by the Petitioner in the Appeal. He submitted that the Petitioner would be seriously prejudiced, if his Application (Exh.7) is not heard before the Appeal is taken up for final hearing. He submitted that the Petitioner intends to examine eight witnesses, who will throw light on the falsity of the prosecution case. He urged that these witnesses are crucial and material witnesses and

therefore, it is necessary to examine the said witnesses. He submitted that the learned Judge had clearly erred in disposing of the said Application (Exh.7) by observing, that if the Court feels that it is essential to reconsider the request made by the Petitioner, then, a detail order will be passed, when the Appeal is finally heard.

4. Learned APP opposes the Application. She submits that no interference was warranted in the impugned order, inasmuch as, the learned Judge has rightly observed, that if the Court feels that it is essential to reconsider the request made by the Petitioner, then, further detail order will be passed thereon. She submitted that the Application (Exh.7) was filed only to delay the proceedings, after three years, after the Cri. Appeal was filed in the Sessions Court. She submitted that after the hearing of the Appeal commenced and after

evidence of nine witnesses was read and oral submissions were advanced, at that stage, the Application was filed. She submitted that the Advocate appearing for the Petitioner whilst making submissions and reading evidence of the said witnesses, had not made any grievance, that the Petitioner had not been given a free and fair trial. She submitted that it is only later, (after almost three years of filing of the Appeal) that an Application (Exh.7) was filed on 30.09.2015 under Section 391 of the Code of Criminal Procedure (Appeal was filed in 2012), praying therein, that the Petitioner intends to examine eight witnesses that summons be issued to the said witnesses or in the alternate direct the trial Court to record the same. According to the learned APP, the Application itself lacks bonafide and has been filed with an ulterior motive to delay the final hearing of the Appeal. She submitted that the witnesses who are sought to be examined by the Petitioner, under Section

391 of the Code of Criminal Procedure, were very much available at the relevant time, during trial.

5. Perused the papers. It is not in dispute that the Petitioner was convicted vide Judgment and Order dated 10.05.2012 by the learned Addl. Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai for the offences punishable under Sections 408, 417, 419, 420, 465, 467, 471, 474, 477(A) of the Indian Penal Code and has been sentenced to suffer S.I. for seven years for the offence punishable under Section 408 of I.P.C.; for one year for the offence punishable under Section 417 of I.P.C.; to suffer R.I. for three years for the offence punishable under Section 419 of I.P.C., to suffer R.I. for seven years for the offence punishable under Section 420 of I.P.C., to suffer R.I. for two years for the offence punishable under Section 465 of I.P.C.; to

suffer R.I. for seven years for the offence punishable under Section 467 of I.P.C.; to suffer R.I. for two years for the offence punishable under Section 471 of I.P.C.; to suffer R.I. for seven years for the offence punishable under Section 474 of I.P.C. and to suffer R.I. for seven years for the offence punishable under Section 477(A) of I.P.C. It is not in dispute that against the said Judgment and Order, in May, 2012, in the Court of the learned Sessions Judge, Greater Bombay. It is also not in dispute, that the hearing of the Appeal commenced and that the evidence of almost nine witnesses was read by the Petitioner's Advocate. It is, at this stage, that an Application (Exh.7) was filed by the Petitioner on 30.09.2015 seeking the following reliefs :-

“(a) That the Hon'ble Court be pleased to allow this present application;

(b) That this Hon'ble Court be pleased to take evidence of Mr. Mahesh Khandelwal, Mr. Shanker

Mani Subramaniam, Mr. G. S. Khandelwal, Mr. M. P. Warde, Mr. Ram Babu Khandelwal, Mr. Deshpande, Mr. Jain and Mr. Ram Gopal Gupta by issuing summons to the said witnesses or in the alternate direct the same to be taken by the Ld. trial Court;

(c) Any other and further reliefs as the nature and circumstances of the case may require."

6. It appears that some of the witnesses mentioned in prayer clause (b) are no more. The learned Sessions Judge has rightly observed that the request made by the Petitioner would be considered after the Appeal was fully heard. There is no infirmity in the said order passed by the learned Appellate Court. No interference whatsoever is warranted.

7. Accordingly, the Petition is dismissed. The trial Court to proceed with the hearing of the Appeal. The Appeal is pending for more than four years. Accordingly, the hearing of the

Appeal is expedited. The Sessions Court to dispose of the Appeal as expeditiously as possible and in any event, within six months from the date of receipt of this order.

8. Learned counsel for the Petitioner, at this stage, seeks continuation of the interim relief. The prayer stands rejected.

9. In view of disposal of the Writ Petition, the Cri.Appln.No.335 of 2016 does not survive and the same stands disposed of accordingly.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)