

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1890 OF 2016

Dr. Mangesh Nagnath Gajakosh ... Petitioner

vs.

The State of Maharashtra & Anr. ... Respondents

Mr. Rahul Arote, Advocate for the petitioner.
Ms. A.A.Mane, APP, for the State.
Mr. V.L.Kharche, Tilak Nagar Police Station present.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 17th June, 2016.

P.C.

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

2. The petitioner herein happens to be the accused in Crime No.254/2013, which was registered against him for the offence punishable under Sections 376 and 313 of the Indian Penal Code. After completion of investigation, charge-sheet was filed and the case is committed to the Court of Sessions on 13.2.2013. The applicant was released on bail by an order dated 4.4.2013. It appears from the Roznama that the accused has appeared before the Court on each and every date. The accused happens to be a

doctor by profession. The Roznama further shows that charge was framed against the accused and the plea was recorded on 9.1.2014. On 18.2.2014, programme for the trial was fixed and the prosecution was directed to keep all the witnesses present. The matter was adjourned from time to time.

3. It appears that the complainant-prosecutrix had filed Writ Petition No.3715 of 2015 seeking the relief of transfer of investigation in Crime No.254 of 2012. Needless to say that at that stage, the charges were already framed. The Hon'ble Division Bench of this Court had taken notice of the said fact and had declined the prayer and disposed of the Writ Petition by an order dated 18.12.2015.

4. On 23.6.2014, the learned Sessions Court was informed by Advocate Shri Asim Sarode who had appeared for the complainant that he has been appointed as Special Public Prosecutor in the said case. The learned Sessions Court in the fitness of circumstances had asked to state the said information on oath and submit it in the Court so that he could proceed with the matter. However, it is noted that in the afternoon neither complainant nor the Advocate appeared.

5. The Roznama also indicates that the complainant had given the cell phone number of her parents who were to be examined as witness. The parents had informed the Sessions Court that when they had contacted on the said cell phone, the brother of the complainant had informed the police that they should not be contacted in any way. It is a matter on record that on 31st July, 2014, the so-called Public Prosecutor Mr. Sarode filed an application for adjournment.

6. The learned counsel for the petitioner has drawn attention of this Court to the Roznama dated 1.9.2014 wherein the learned Sessions Court was constrained to observe as follows :-

“The case is fixed for trial/evidence. The FIR previously registered can be filed at this stage. The case was fixed for evidence by compliance on 01.04.2014. However, though the witnesses were present Prosecutrix remained absent. Therefore, the matter was adjourned. On 23.06.2014 also the complainant filed adjournment application which is rejected. In spite of rejection of adjournment application complainant remained absent in the afternoon session. Thereafter, SPP is appointed who adjourned the matter. Considering the same it is found that the complainant herself does not want to proceed with the matter. SPP is given time to go through the record,

however the application filed today which is with ground that some statement of witnesses are to be filed. Charge sheet is filed on 17.01.2013 and how after the trial has commenced the statements of witnesses are to be filed is unexplained. Prayer for it hence rejected subject to fine of Rs.100/- on IO.”

7. On 30.9.2014, the Sessions Court observed as follows :-

“Counsel for complainant appointed by her personally absent. Complainant absent.

The matter is fixed today at the request of SPP with consent of the Counsel for the Complainant. Even the time was fixed at 12.30 p.m. However, none turned up. The SPP has been appointed for the State in this matter. However, it is noticed that neither the SPP nor the complainant are willing to proceed with the trial diligently. The Court has noticed various lapses on the part of prosecution, since commencement of trial. The absence of SPP be informed to the State, Department of Law and Judiciary, Mantralaya, Mumbai.

In the absence of Prosecutor and the complainant-victim and her lawyer, the regular APP appearing before the court is hereby directed to look into the matter. The same be also informed to the State Department of Law and Judiciary, Mantralaya, Mumbai.

Therefore, the Court on its own issues BW of Rs.1000/- to the complainant-victim, so as to secure her presence as the matter is fixed for cross examination of victim by the accused.”

It is clear that the complainant had made attempts to protract the proceedings. This Court cannot be oblivious of the fact that the petitioner happens to be a professional. The unwarranted protraction at the instance of

the complainant is deprecated. It is pertinent to note that on 3.2.2016, the prosecution had filed an application seeking adjournment on the ground that they want to go through the case papers. It is strange that after recording the evidence of the complainant the prosecution seeks time to go through the papers. In fact, it is incumbent upon the prosecution to go through the papers at the initial stage not only at the trial, but at the very stage of framing of charge.

8. On 3.3.2016, for the first time, the learned Chief PP submitted before the Sessions Court that the investigation is not properly done and therefore certain more information is required to conduct the matter. It was obvious that the informant and the prosecution did not wish to proceed with the matter without further enquiry. All this, after the Hon'ble Division Bench of this Court, by an order dated 18.12.2015, had clearly observed that no case is made out for transfer of investigation. On 11.4.2016, again the Chief PP was absent. As previously informed by Chief PP and as informed by learned APP further investigation has been sought and therefore, a request was made to adjourn the matter. On 11.4.2016, an application was made for production of documents under Section 294 of Cr.P.C.

9. In an application under Section 294 of Cr.P.C., the accused would be called upon to admit or deny the said documents. After filing of additional documents, the complainant would have to be recalled again for re-examination and then cross-examination. It is not the case of the prosecution even at this stage that those documents were not in existence when the charge-sheet was filed or at the stage when the first application under Section 294 of Cr.P.C. was made. Despite that, the learned Sessions Court had allowed the production and called upon the accused to admit or deny the documents as contemplated by law.

10. **In Husainara Khatoun and others vs. Home Secretary, State of Bihar AIR 1979 SC 1369**, the Hon'ble Apex Court held as follows :-

“The State cannot avoid its Constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a Constitutional mandate to ensure speedy trial and whatever is necessary for this purpose, has to be done by the State”.

11. In this background, the petitioner has approached this Court by filing the present Writ Petition seeking the relief that the trial be expedited. In the above circumstances, the prayer will have to be granted. The

Court cannot grant the prayer of day-to-day trial. However, it is informed on instructions that the next scheduled date is 5.8.2016. A delayed trial would amount to denial of justice if the matter is delayed on unwarranted grounds and more so, at the convenience of the parties. It would disturb the schedule of learned Sessions Judge also. It is, therefore, directed that from 5.8.2016, the learned Sessions Judge seized with Sessions Case No.122 of 2013, shall make every endeavour to conclude the recording of evidence within three months from 5.8.2016. The learned Sessions Court shall also enquire from the Chief PP as to whether Mr. Sarode was appointed by the Department of Law & Judiciary and whether he had withdrawn his appearance on his own. The same may be recorded in the Roznama as well as the Judgment as it shall be relevant factor to determine as to why the trial was delayed.

With these directions, the Petition stands allowed. Rule is made absolute and Petition stands disposed of.

(SMT.SADHANA S.JADHAV, J.)