

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2229 OF 2013

Shri Dilawar Singh. ... Petitioner.

Versus

Shri Goldi Singh & anr. ... Respondents.

Mr. Madan S. Khati, advocate for Petitioner.

Ms. A.T. Javeri, APP for State.

CORAM : RAVINDRA V.GHUGE, J
DATE : JULY 13, 2016

P.C.:

1 The Petitioner is aggrieved by the order passed by the learned Magistrate dated 7/12/2011, by which his application Exh. 50 for re-examination of the complainant has been rejected. The Petitioner is also aggrieved by the order of the learned Sessions Court dated 2/4/2013, by which his Revision Application No. 1 of 2012 has been dismissed. The petitioner also prays that his complete examination-

in-chief and the cross-examination be struck off and the petitioner be allowed to have his examination-in-chief recorded afresh.

2 Despite service of notice on respondent No. 1 through paper publication, the said respondent has not chosen to enter an appearance, either in person or through an advocate.

3 The contention of the petitioner is that the complainant filed his evidence by an affidavit in lieu of examination-in-chief and was further examined before the court, Cross-examination by the accused was conducted, which runs into 10 pages. Thereafter, the petitioner-complainant realised that re-examination is necessary and application seeking permission to re-examine the Petitioner was filed at Exh. 50. The said application has been rejected by the impugned order dated 7/12/2011. Subsequently, the revision application filed by the petitioner was also rejected.

4 Grievance of the petitioner-complainant is that since the same question was repeated in cross-examination, an incorrect answer was given by the Petitioner. This situation warrants re-examination, so as to clear any confusion in the statements made.

5 The Petitioner refers to the application Exh. 50 to contend that he had made out a good ground for seeking leave to re-examine himself. In the alternative, the petitioner has prayed that his examination-in-chief and cross-examination be set aside and this Court may direct the learned Magistrate to allow the petitioner to lead fresh evidence.

6 The learned advocate has further submitted that certain documents, such as his account passbook, were not exhibited. He had specifically stated that he had received Rs. 1 Lakh from the accused in the year 2008 against the money advanced by him to the accused. He then, stated in the cross-examination that he had

received Rs. 1 Lakh in the year 2008. Then, he stated that he received Rs. 1 Lakh towards interest. Then he has stated that he has received Rs. 1 Lakh in May, 2009. Thereafter, he has stated that he had received Rs. 1 Lakh in 2008 as per Exh. 21.

7 The learned advocate for the petitioner therefore, submits that this confusion needs to be cleared by recording re-examination of the petitioner, or by setting aside the entire evidence recorded and the petitioner be granted leave to lead fresh evidence.

8 I have considered submissions of the learned advocate for the petitioner at length.

9 It appears that the consistent story of the petitioner is that he had received Rs. 1 Lakh as per Exh. 21 in the year 2008 against the money that he had advanced to the accused. Though, on internal page-14 of the cross-examination of the petitioner, it appears that he

has slightly got jumbled with regard to the amount of Rs. 1 Lakh paid in 2008 against the principal amount and the amount received towards interest, he has finally stated that "*It is correct to suggest that as per Exh. 21 I have received Rs. 1 Lakh in the year 2008.*". The petitioner submits that this is the correct statement made.

10 I have considered the application Exh. 50 in the light of the submissions of the petitioner. I do not find any proper justification for permitting the petitioner to again step into witness box for re-examination. The trial Court has therefore, rightly concluded that the examination and cross-examination of the petitioner was conducted in the presence of the parties and in the open court and no request for re-examination was made. Nevertheless, I find that in cross-examination, the petitioner appears to have maintained his case that he has received Rs. 1 Lakh in 2008 towards the principal amount.

11 In this backdrop, I do not find that the learned Sessions Court has committed any error in dismissing Criminal Revision Application filed by the petitioner. This Petition being devoid of merits, therefore, is dismissed.

(RAVINDRA V.GHUGE, J)