

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 2505 OF 2016

Jayant Rangnath Kulkarni

.....Petitioner

V/s.

Shirish Damodar Aranake and another

....Respondents

Mr. Kuldeep Nikam Advocate for Petitioner.

Mr. Chaitanya Sakhare for Respondent no. 1

Mr. A. R. Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 5, 2016.

PC :

- 1) Heard.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) The Petitioner herein happens to be the accused in S.C.C. No. 686 of 2008. In the course of the trial, the accused had prayed to the learned Magistrate to permit him to examine the defence witness. That it appeared in the examination-in-chief, the defence witness, who happens to be a Notary, had supported the accused, however, it appears that he was shattered in the cross-examination or that he chose to resile from his examination-in-chief. The accused had then made an application seeking re-examination of the

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defence witness. The said application was rejected by the learned Magistrate and hence, the accused i.e. present Petitioner was constrained to file Criminal Application No. 349 of 2016 which was decided by this Court vide order dated 16/04/2016. This Hon'ble Court had taken an undertaking from the Petitioner that he would keep the witness present on 20/04/2016. This Court had considered the issue that re-examination will be restricted to the inconsistency in the evidence of the defence witness in his examination-in-chief and cross-examination. The application was conditionally allowed.

4) On 20/04/2016, the Petitioner could not keep his witness present as there was no material to demonstrate before the learned Magistrate that his application had been allowed by the Hon'ble High Court vide order dated 16/04/2016 as the order was not uploaded. There was an apprehension in the mind of the Petitioner that the learned Magistrate may not rely upon the oral statement made by the learned counsel for the accused. On 30/04/2016, the Advocate appearing for the accused was directed by the learned Magistrate to produce the copy of the order of the Hon'ble High Court before proceeding with the application. Hence, it was clear that the learned Magistrate would not pass necessary order until the order is placed on record.

5) The learned counsel for the Petitioner submits that the order was uploaded on 17/05/2016. An application was filed by the accused to issue summons to defence witness on 18/04/2016 as there was an apprehension that the witness would not remain present at the request of the accused. On 30/04/2016, the learned Magistrate had again demanded the copy of the order of the Hon'ble High Court which was uploaded on 17/05/2016. The learned counsel for the complainant at the trial had opposed the issuance of summons to the defence witness and the main contention was that the High Court had not directed or permitted the accused/applicant to prefer an application before the Trial Court for issuing summons to the defence witness, on the other hand, the accused was directed to keep the defence witness present before the Trial Court on 20/04/2016 without any application. Needless to say that an inference can be drawn that this Hon'ble Court had permitted the Petitioner to re-examine the defence witness. The said application seeking issuance of summons was rejected by the Judicial Magistrate First Class by an order dated 11/07/2016. Hence, this petition.

6) In the facts and circumstances of this case, it can be seen that the defence witness had not resiled from his earlier statement, but that he had

succumbed to the suggestions in the cross-examination which were not in favour of the accused person. The learned counsel for the Petitioner rightly submits that it is in these circumstances that re-examination of the defence witness would be necessary in order to enable the learned Judicial Magistrate First Class to appreciate his evidence on oath in its proper perspective. The manner of appreciation of evidence of such a witness would fall within the discretion of the learned Magistrate and he shall appreciate the evidence of the defence witness in accordance with Law. This Court cannot be oblivious of the fact that on the earlier occasion, permission was granted to re-examine the witness in the interest of justice and the same cannot be denied to him only because he could not produce the witness on 20/04/2016, as at that juncture, there was no order to support his claim in respect of the permission to re-examine the witness.

7) It is in these circumstances, the order dated 11/07/2016 passed by the Judicial Magistrate First Class, Satara in S.C.C. No. 686 of 2008 deserves to be quashed and set aside.

8) The learned counsel for the Respondent vehemently and rightly submits that the case is of the year 2008 and it has been delayed at the behest of the

accused person and therefore, it would be necessary to conclude the trial as expeditiously as possible. The learned counsel for the Respondent further submits that the complainant has also completed his arguments in the present case. Hence, following order.

ORDER

- (i) Writ petition is allowed.
- (ii) The order dated 11/07/2016 passed below by the Judicial Magistrate First Class, Satara below Exhibit 295 in S.C.C. No. 686 of 2008 is hereby quashed and set aside.
- (iii) The learned Magistrate is hereby directed to issue summons to the defence witness within one week from the date of receipt of this order and direct the defence witness to remain present before the Court for the purpose of re-examination by the accused within 2 weeks from the date of issuance of summons.
- (iv) The learned Magistrate is also directed to exercise the powers under Section 137 and 154 of the Indian Evidence Act and complete the recording of evidence within 4 weeks from the date of the receipt of this order.
- (v) The complainant has a right to cross-examine the defence witness after

he is re-examined.

(vi) Rule is made absolute in the above terms.

9) The learned counsel for the Petitioner gives an undertaking that he would not protract the recording of evidence on the scheduled date.

(SMT. SADHANA S. JADHAV, J.)