

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5049 OF 2014

S.K. Banerji, Managing Director of Saraswat Co-op. Bank Ltd., Nerul, Navi Mumbai		Petitioner
V/s.		
Shriram Gangadhar Date & Anr.		Respondents

Ms. R.V. Pradhan for the Petitioner.

Mr. Amit Date a/w. Ms. Anjali Thakoor for
Respondent No.1.

Mrs. A.S. Pai, A.P.P., for Respondent No.2-
State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH JANUARY 2016.

P.C. :

1. By this Writ Petition, the Petitioner/Original Accused is challenging the order dated 16th October 2014 of the Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai, passed in C.C. No.567/SS/2005, thereby issuing witness summons to one Mr. Mahendra P. Barde at the instance of the application (Exhibit-21) filed by Respondent No.1-Complainant.

2. The main contention advanced by learned counsel for the Petitioner-Accused is that the name of this witness Mahendra Barde was not cited in the list of witnesses, nor it appeared in the evidence of either the Complainant or any of its witnesses. The defence of the Petitioner-Accused is already opened, as five witnesses have been examined by Respondent No.1 and they are also cross examined by the Petitioner. At this stage, if the witness summons is issued to Mr. Mahendra Barde, who was one of the Directors of the Petitioner-Bank, serious prejudice would be caused to the Petitioner and hence the application filed by Respondent No.1 for issuing witness summons to Mr. Mahendra Barde was hotly contested and, on the same count, in this Petition also, the impugned order passed by the Trial Court is challenged.

3. However, as rightly submitted by learned counsel for Respondent No.1 and held by the Trial Court, there is absolutely no question of any prejudice being caused to the Petitioner-Accused, as the Petitioner is getting an ample opportunity to cross-examine the said witness. Mere non citing of name of a particular witness in the list of witnesses annexed to the complaint, does not prohibit or does not act as any legal-bar for the Complainant to adduce the evidence of such witness. Especially, in the present case, in the complaint itself, Respondent No.1-Complainant has

suggested that he is likely to examine any of the Directors of the Petitioner-Bank as his witness and, admittedly, Mr. Mahendra Barde was one of the Directors of the Petitioner-Bank. It is also pertinent to note that, considering the issue involved and the scope of the controversy in the proceedings, this Mr. Mahendra Barde is not completely a stranger or totally an alien. Reference to him is also found in the complaint in respect of the meeting dated 2nd August 2003. Therefore, there is no question of the Petitioner-Accused being taken by surprise on account of leading of the evidence of this witness. It is needless to say, that in the complaint itself it is categorically stated that the Complainant is at liberty to examine any of the additional witnesses whose names are not cited in the list of witnesses, subject to the permission of the Court. The Trial Court, after taking into consideration the entire facts and circumstances before it, has granted such permission and on perusal of the impugned order of the Trial Court, I do not find that it suffers from any infirmity so as to warrant interference therein.

4. As regards the authority relied upon by learned counsel for the Petitioner, that of ***Bhiku Yeshwant Dhangat & Ors. Vs. Baban Maruti Barate & Anr., 2000 ALL MR (CRI) 1437***, the issue involved therein was totally different from the present case. In that case, the list of witnesses

was not at all attached to the complaint and, despite that, as the process was issued, it was held that the Accused should not be taken by surprise. Here in the case, there was a list of witnesses attached to the complaint and in the list of witnesses, it was mentioned that the Complainant would like to examine any one of the Directors as the witnesses. He has also sought permission of the Court to examine any other witness, as may be found necessary. In such situation, this authority cannot be made applicable at all to the facts of the present case.

5. To sum up, therefore, the Writ Petition holds no merit, hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]