

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2344 OF 2017

DEEPAK S/O. BHIKULAL MANTRI. **.. APPLICANT.**

VERSUS

THE STATE OF MAHARASHTRA. **..RESPONDENT.**

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Advocate for Applicant : Mr.Kulkarni Suvidh S.
APP for Respondent/State: Mr.S.Y. Mahajan.
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CORAM : V.L. ACHLIYA, J.

Dated: AUGUST 18, 2017.

ORAL ORDER:

1. This application is filed u/s 482 of the Code of Criminal Procedure challenging the order dated 17.11.2016. By the impugned order, the trial Court has allowed the application to reissue summons to P.W.6 pursuant to application moved by the prosecution.

2. Heard learned Counsel for the applicant – accused and APP for the respondent – State. Perused the impugned order passed by the trial Court.

3. In nutshell, it is contention of the learned Counsel for the applicant that the impugned order is not sustainable in law for the reason that it amounts to review /recall of order passed by predecessor of the learned Magistrate, who has passed the order on 5.10.2015 and closed the evidence of P.W.6. In this background, it is contended that the successor Presiding Judge could not have entertained the application seeking examination of P.W.6. It is further submitted that the applicant is facing rigors of trial for last ten years. Recording of evidence of the witnesses for prosecution started w.e.f. 6.4.2011. The prosecution has repeatedly sought adjournment to examine the witness. In last five years only five witnesses have been examined. It is contended that

up-till now at least 74 adjournments were obtained by the prosecution to examine the witnesses.

4. On the other hand, learned APP supported the order passed by the trial Court with contention that the order is perfectly legal, proper and calls for no interference in exercise of inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure. He submits that the order of issuance of witness summons to witness, whose evidence could not be recorded on earlier occasion, neither amounts to abuse of process of law nor can be termed as illegal or arbitrary. He submits that the accused is facing charge of carrying money lending business without licence. P.W.6 is claimed to be one of the victim of alleged act of illegal money lending carried by the accused. P.W.6 was summoned for recording his evidence. However, his evidence could not be recorded due to non submission of transcript of the conversation tape recorded. Later

on, the application came to be moved by prosecution to re-issue summons to P.W.6 by explaining the Court as to how it is essential to record the evidence of P.W.6 for the just decision of the case. On due consideration of rival submissions, the Court has allowed the application. It is contended that the order passed by the trial Court is legal, proper and calls for no interference in exercise of inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

5. Having appreciated the submissions advanced, I am of the view that no case is made out to invoke the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure. The impugned order passed by the trial Court cannot be termed as abuse of process of law. It is an admitted position that the evidence of the prosecution is yet to be concluded. The fact is also not in dispute that the prosecution has cited P.W.6 as a witness. The fact is also not in dispute that though P.W.6 was summoned as a witness, his evidence could

not be recorded. P.W.6 is alleged to be one of the victims of alleged act of illegal business of money lending. Thus, in the light of facts of the case, the order passed by the trial Court to issue summons to P.W.6 cannot be said to be illegal, arbitrary or contrary to law. So also, the order cannot be termed as a review of order passed in the matter. In conduct of proceeding, the court is expected to pass such orders. Only for the reason that earlier the Court has passed order and proceeded further with the matter without recording evidence of P.W.6, cannot be a ground to reject the application seeking reissue of witness summons to same witness. If the Court was satisfied and found that for the just decision of the case recording of evidence of such witness is essential, then the trial Court has acted well within its power to summon, recall, re-examine any witness at any stage of the proceedings before delivering the judgment as provided u/s 311 of Cr.P.C. In this view, the order passed by the trial Court calls for no interference in

exercise of powers u/s 482 of the Code of Criminal Procedure.

6. So far as grievance of the applicant that under the guise of such application, accused is unnecessarily harassed, same can be duly addressed by giving appropriate direction in the matter. I found some substance in the submission of learned Counsel for petitioner. It appears that the charge-sheet has been filed in the year, 2007. In spite of framing of charge in the year, 2011, the trial has not concluded though the period of more than six years has lapsed. It is pointed out by the learned Counsel for the applicant that recording of the evidence started w.e.f. 6.4.2011. Since then the prosecution has sought as many as 74 adjournments. In last more than six years, the prosecution has examined only five witnesses. In my view, this reflects upon the overall conduct of proceeding on the part of the prosecution as well as trial Court. Therefore, in view of the peculiar facts of

the case brought to the notice of the Court, I am inclined to direct the trial Court to expedite the hearing of the case and conclude the proceedings within three months from the date of this order.

7. Accordingly, the application is disposed of with direction to trial Court to conduct and decide the proceedings in expeditious manner. The trial Court shall make endeavour to complete the trial within twelve weeks from the date of this order. Parties are directed to co-operate with the trial Court in expeditious disposal of case. The trial Court is directed not to entertain the request for adjournment unless, compelling reasons are made out to entertain such request.

8. Application stands disposed of in above terms.

(V.L. ACHLIYA, J.)