

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 619 OF 2017

City Centre Mall Commercial Premises

Co-operative Society (Proposed) ..

Petitioner

Vs.

Akshar Developers, a Partnership Firm & Ors.. ...

Respondents

Mr. A.D. Chandra Bose a/w Ms. Bhaktishali Sawant i/b. Mr. Mohan N. Devkule, for the petitioner.

Ms. Neeta Jain, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 7th April, 2017.

P.C.

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

2. Being aggrieved by the order dated 23.8.2016 passed by the Judicial Magistrate, First Class, Vashi, thereby rejecting the application below Exhibit 103, seeking the relief under Section 246(6) of Cr.P.C. has approached this Court.

3. The case is of the year 2011. It appears from the record that on 8.6.2015, the complainant herein requested the Court to defer the final argument in RCC No.103 of 2011 on the ground that he wanted to examine the prosecution witnesses as per the mandate of Cr.P.C. It is pertinent to note that in the application, the applicant had only stated that he desires to examine 3 more witnesses as per the list annexed to the application. The list is not annexed in this Petition. It is clear from the averments in the

application that no reasons were stated for examining the said witnesses and the relevancy of examining the said witnesses. The Court also cannot be oblivious of the fact that the application was filed at a belated stage and after the application under Section 311 of Cr.P.C. was rejected. It is also pertinent to note that by then the statement of the accused was recorded under Section 313 of Cr.P.C. and the case was only posted for final argument. Needless to say that the complainant has put in best of efforts to protract the trial as far as possible.

4. The learned counsel for the petitioner submits that due to change in Advocates, proper steps were not taken at appropriate stage.

5. According to the learned counsel for the petitioner, the application was filed under Section 246(6) of Cr.P.C.

“246. Procedure where accused is not discharged

(6) The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged.”

Section 246 clauses 1 to 5 have enlisted the stages of the trial in the case where the accused is not discharged and charge is framed against the accused under Section 246(2) of Cr.P.C. The stage for considering an application under Section 246(6) of Cr.P.C. is after concluding recording of

evidence of the witnesses and not after recording the statement under Section 313 of Cr.P.C. It is evident that by then the accused has disclosed his defence which is based upon the material that is produced pursuant to the charge.

6. Needless to reiterate that there is a particular stage at which an application should be considered under Section 246(6) of Cr.P.C. Moreover, the relevancy of examining the said witnesses has to be demonstrated before the Court at the time of seeking a relief under Section 246(6) of Cr.P.C. which is not done in the present case. It is in these circumstances, that the learned counsel for the applicant seeks liberty to file an application before the JMFC Court No.2, Vashi at CBD Belapur, giving relevancy of the witnesses that are to be examined. After recording statement under section 313, Cr.P.C., the lacunas cannot be filled in by the prosecution or the complainant. The learned Magistrate shall consider the said application on its own merits. The said application be decided within two weeks from the date of filing of the said application and proceed with further stages.

Writ Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)