

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.198 OF 2017**

Ms. Aruna Narayankar

... Applicant/  
Org. complainant

Versus

State of Maharashtra and ors.

... Respondents

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Mr.Prashant Pandey i/by Mr. Mikdad A. Zummerwala, Advocate  
for the Applicant.

Ms.Pallavi Dabholkar, APP for the State/Respondent Nos. 1 and  
2.

Mr.Sudeep Pasbola with Mr. Bhavesh Thakur i/by Mr. Rahul  
Arote, Advocate for Respondent No.3.

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**CORAM : RAVINDRA V.GHUGE, J.**

**DATE : 14 MARCH, 2017.**

**P.C. :**

1. The Petitioner is aggrieved by the order dated 5<sup>th</sup> January, 2017 passed by the learned Additional Sessions Judge rejecting the application Ex.55 by which the prosecution had prayed for summoning Dr. Ankush Ajmera as the prosecution witness.

2. The Petitioner is the prosecutrix.

3. By the application dated 11<sup>th</sup> November, 2016, the

prosecution desired to examine Dr. Ajmera since he was the author of the report-Ex.51. Apprehension is that though Dr. Kurudkar, who is the Professor and Head of the Department of OB and Gynecology, Ex. 51 may not be read in evidence since the accused has objected to the said document on the ground that the author of the document was not examined.

4. I have heard the learned Advocates for the Applicant and Respondent-State at length. I have perused the application dated 11<sup>th</sup> November, 2016 which is not a part of the Petition paper-book and the D.N.A. report dated 12<sup>th</sup> April, 2013.

5. The controversy appears to be that the case of the prosecution is that the prosecutrix was referred to the hospital not only for collecting the D.N.A. sample, but for conducting the procedure of Suction-Evacuation keeping in view the case of incomplete abortion. Dr. Kurudkar, who is the head of the department, was examined and he has expressed an opinion about the certificate dated 2<sup>nd</sup> November, 2012 issued by Dr. Ajmera. In his opinion, he has stated that the diagnosis of incomplete abortion is not confirmed.

6. The prosecution desires to examine Dr. Ajmera only for the purpose of bringing on record such testimony so as to prove that the prosecutrix was referred to the concerned hospital, not only and purely for collecting D.N.A. sample, but

for conducting a procedure. Dr. Ajmera had conducted the said procedure mentioned in the Report.

7. It is also stated by the Petitioner that the objection of the learned Advocate for the accused, is likely to establish that the report of Dr. Ajmera is not proved.

8. Per contra, learned counsel for Respondent No. 3-accused submits that the report has been exhibited, the author of the report has been identified, his signature has been identified and as such the document Ex. 51 would therefore, be open for the learned Additional Sessions Judge to look into and analyze its contents.

9. I find that the objection recorded in paragraph No. 3 of the deposition of Dr. Kurudkar is with regard to the handwritten portion on the last page below the signature of Dr. Ajmera on the Report Ex.51. That handwritten portion in Hindi indicates that the prosecutrix and her relatives wanted her discharge from the hospital and her relatives insisted that they would take away the prosecutrix who was admitted. The handwritten portion is practically in the nature of an undertaking given by the prosecutrix and her relatives that the doctor would not be blamed, if any complication occurs pursuant to her discharge on their insistence.

10. The report-Ex. 51 which is signed by Dr.Ajmera on 3<sup>rd</sup> November, 2012 has been proved. Though Dr.Kurudkar may have expressed an opinion about its contents, the learned Additional Sessions Judge while deciding the matter would certainly be at liberty to scrutinize the report and conclude as to whether the report would indicate merely an act of collecting D.N.A. sample or whether some medical procedure was performed on the prosecutrix, which is expressed as Suction-Evacuation on account of the incomplete abortion.

11. Keeping the above aspect in view and by expressing that the learned Additional Sessions Judge would consider the report-Ex.51 on its own merits, I do not find that the impugned order could be faulted. The Petition being devoid of merits, is disposed of.

**(RAVINDRA V.GHUGE, J.)**