IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 383 OF 2017

Mr. Rajeev Khandelwal. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Rishi Bhuta a/w. Mr. Abhishek Yende i/b. Mr. Sunil D'Souza, advocate for Applicant.

Mr. H.H. Nagi a/w. Ms. Chaula Solanki a/w. Mr. I.B. Singh i/b. Nagi & Associate, advocate for respondent No. 2.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 4, 2017

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The applicant herein happens to be the original accused No. 3 in C.C. No. 5953/SS/2015 pending before 33rd Court, Ballard Pier, Mumbai. Being aggrieved by the order dated 18th March, 2017 present application is filed under section 482 of the Code of Criminal Procedure, 1973.

4 By an order dated 8/9/2016 this Court (Coram : Revati Mohite Dere, J) had directed the learned Metropolitan Magistrate to dispose of C.C. No. 5953/SS/2015 as expeditiously as possible and in any event, within three months from the date of receipt of this order. The Court had taken into consideration the fact that the case was pending for almost 20 years and there was no progress. Time was extended by an order dated 6th February, 2017. The order dated 6/2/2017 is reproduced :

> "The reason for failure to dispose off the matter within three months stated in the request of the learned Judge is excessive

time taken by the defence Counsel for the cross-examination and the large pendency of the matters in his Court. ..."

"The cross-examination of P.W. 2 had commenced on 29/9/2016. It was recorded in bits and pieces, on the next 19 dates and completed on 13/12/2016. On each date, about half an hour to one hour was devoted to the matter."

This Court (Coram : Smt. R.P. Sondurbaldota, J) has specifically observed that-

"There ought to have been better management of the proceeding."

5 On 10/2/2017 while deciding Criminal Application No. 177 of 2017, this Court had appreciated the factual background. It appears that at that stage, this Court (Coram : Smt. R.P. Sondurbaldota, J) had observed that the evidence of first witness was completed way back on 18/2/2014. On 18/11/2014 the applicant i.e. the present

petitioner had filed application below Exh. 155 for recalling of the first witness. The said application was rejected as it was not maintainable at that stage. On 13/1/2017 second application for recall at Exh. 217 came to be filed. In that application, it was contended that after the evidence of P.W. 1 was completed. P.W. 2 had filed several documents vide a separate list of documents. The applicant alleged that the documents had deliberately not been produced through P.W. 1, though copies of the documents were available when he was examined. The Hon'ble Judge had considered the fact that P.W. 2 has already been extensively cross-examined by confronting him with the documents on record. This Court had observed that the applications below Exh. 155 and Exh. 127 were filed by the applicant i.e. the present applicant as an attempt to further delay the proceedings. Hence, the application was rejected.

6 It is pertinent to note that the present applicant had filed an application on 18/2/2017 under section 254(2) of the Code of

Criminal Procedure, 1973 for issuing summons to the defence witnesses as enlisted by him in his application below Exh. 231. Prima facie, the learned Magistrate was of the opinion that in the interest of justice, it would be appropriate to call upon the witnesses enlisted in the application except the hand writing expert. The order was passed on 18/2/2017 and witness summons were issued to the Manager of State Bank of India, Commercial Branch, Mumbai, Registrar of company, Mumbai, CEO, Bombay Stock Exchange Ltd., Mumbai, CEO National Stock Exchange, Mumbai and Account officer of accused No. 1 company. The application was finally decided on 18/3/2017 and the learned Magistrate had observed that the Magistrate could have compared the signature and formed his own opinion as contemplated under section 73 of the Indian Evidence Act. It was specifically observed that till the fag end of the trial, the present applicant had not filed any application seeking relief of sending disputed cheque to the hand-writing expert.

7 The learned Counsel for the applicant vehemently submits that till that stage, there was no opportunity for the accused to file such application. The submission itself is unfounded. The applicant has not led any foundation for calling the hand-writing expert as a witness. Authority of the hand-writing expert to compare the signature and give an opinion in respect of signatures on the disputed cheque has to be undertaken scientifically and by following the procedure.

8 In the present case, the application is filed at the fag end of the trial calling upon the hand-writing expert to come before the court and compare the signatures and form an opinion. In the absence of any foundation to summon the hand-writing expert the learned Magistrate has rightly rejected the application for summoning hand-writing expert. The learned Magistrate has passed justifiable orders which calls for no interference.

9 Taking into consideration the past conduct of the applicant, it is more than clear that this is one of the delaying tactic adopted by the applicant at the fag end of the trial i.e. at the stage of recording the statement under section 313 of the Code of Criminal Procedure, 1973. This Court cannot be oblivious of the fact that all these applications are filed after this Court had passed an order directing the Magistrate to expedite the trial and conclude the same within 3 months. It is further clear that the orders passed by this Court have become futile in view of the applications being filed by the original accused No. 3. It is true that every accused deserves a fair opportunity to defend himself. That by itself does not mean that the fair opportunity should be extended to such an extent that it become difficult to dispense justice within the stipulated period. It is clear that the applications are being filed only to frustrate the orders of the Hon'ble High Court. A fair opportunity also means a reasonable opportunity to be exercised within a reasonable time.

10 Hence, the application being sans merits stands rejected. It is made clear that the learned Magistrate shall proceed with the trial forthwith. Office to communicate this order to the concerned court forthwith.

11 Rule is discharged. The application is disposed of accordingly.

(**SMT. SADHANA S. JADHAV,J)**