

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3271 OF 2017

Jafar Mehaboob Shaikh

Petitioner

versus

State of Maharashtra

Respondent

Mr.Satyavrat Joshi for Petitioner.

Mr.N.B.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st August 2017

PC :

1. The Petitioner has challenged the order dated 9th May 2017 passed by learned Additional Sessions Judge, Pune in Sessions Case No.455 of 2011. The Petitioner had preferred an application under Section 311 of Code of Criminal Procedure, 1973 ('Cr.PC.') on 6th May 2017. The said application was preferred on the ground that prosecution has exhibited Chemical Analyzer's report vide Exhibit-62 on 13th April 2017, when the matter was kept for final arguments. The Petitioner, therefore, prayed that PW-2 and PW-8 may be recalled vide Section 311 of Cr.PC.. PW-2 is the Spot Panch and PW-8 is the person who had taken the deceased to hospital. It was therefore, submitted that the said witnesses are required to be recalled in the light of C.A.report which speaks about existence of kerosene at the scene of offence.

2. The prosecution opposed the said application by filing say. It was contended that the application was preferred to protract the trial, although the Petitioner has cross-examined PW-2 and PW-8 at

the earlier point of time. The application was deliberately preferred at the belated stage to cause delay in trial. Learned APP relied upon the say filed before the Trial Court and submitted that the order passed by the Sessions Court does not require interference.

3. I have perused the evidence of PW-2 and PW-8, application preferred by the Petitioner under Section 311 of Cr.P.C. and the impugned order passed thereon. It is admitted fact that chemical analyzer's report was brought on record subsequently after the statement of accused was recorded under Section 311 of Cr.P.C. The said statement was recorded on 10th August 2016. It would be just and proper that PW-2 be recalled before the Trial Court for further cross examination by defence. As far as PW-8 is concerned, he had not supported the prosecution case and the defence intends to further cross examine him on the basis of the fact that he is the person who has taken the deceased to hospital. I find no reason to recall PW-8 for further cross examination under Section 311 of Cr.P.C.

4. In view of the aforesaid observations, a case is made out to recall PW-2. Hence, I pass following order :

ORDER

(i) The impugned order dated 9th May 2017 passed by learned Additional Sessions Judge, Pune below Exhibit-71 in Sessions Case No.455 of 2011 is quashed and set aside;

(ii) Learned Additional Sessions Judge, Pune is directed to allow application preferred by Petitioner below Exhibit-71 for recalling PW-2 in Sessions Case No.455 of 2011;

(iii) Evidence of PW-2 in Sessions Case No.455 of 2011, after he being recalled, be recorded in accordance with law;

(iv) The petition is disposed of;

(v) Parties and all concerned to act on an authenticated copy of this order duly issued by registry of this Court.

(PRAKASH D. NAIK, J.)

MST