

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3508 OF 2016

Ashok Trambak Gaikwad and Ors

....Petitioners.

Vs.

The State of Maharashtra and another

... Respondents

Ms. Babita P. Pandey Advocate for Petitioner

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

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 29th MARCH, 2017.

P.C.

1) Heard.

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

3) Petitioner herein happens to be accused in crime no. 133 of 2011. Petitioner is facing trial for offence punishable under sections 467, 468, 420 r/w 34 of the Indian Penal Code in Criminal Case No. 47 of 2012. The recording of evidence was in progress. Prosecution had filed an application

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seeking production of original documents in respect of sale deed no. 2331 of 2009 and the correction proceeding in 277 of 2010. It was submitted by the prosecution that Mangala Marwadi had expired on the date of alleged registration of the said documents and therefore, it was alleged that the accused have forged and fabricated the documents and therefore, prosecution had filed an application seeking directions that the Court may direct the accused Vasant Chavan to produce the said documents in the midst of the trial.

4) The learned Trial Court after hearing both the parties has categorically observed that no reason is given by the prosecution for seeking such production from the accused. No explanation is offered by the prosecution as to why the said document was not seized from the original accused no. 5 in the course of investigation and the reason as to what had constrained the prosecution from filing certified copies. The learned Trial Court had rightly recorded that the presumption of innocence is always there in favour of the accused unless he is proved guilty on the basis of material collected in the course of investigation. It would be an incriminating material and therefore,

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the learned Magistrate had rightly rejected the said application. It appears that the present petitioner who is co-accused, Ashok Gaikwad filed an application before the Trial Court seeking directions that the application filed by the State should be considered under section 61 & 62 of the Indian Evidence Act. It is pertinent to note that application filed by the State was rejected on 05/03/2016 and the petitioner had filed an application on 05/08/2016. It was also prayed that the accused be directed to produce the document and the same should be exhibited.

5) There is no provision for entertaining such application filed by the co-accused. Co-accused cannot seek review of the order dated 05/03/2016 which was filed by the State.

6) The learned counsel for the petitioner submits that till today, this application has not been decided by the Trial Court.

7) The learned Trial Court is hereby requested to decide the application dated 05/08/2016 filed by the petitioner within one week from the date of

receipt of this order.

8) Rule is discharged.

9) Writ petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)