

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.213 OF 2016

(The State of Maharashtra vs. Umesh Ghanshyam Rathod @ Umesh Jayant Parekh and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri T.A. Mirza, Additional Public Prosecutor for
applicant.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 24, 2017

In spite of issuance of notice for final disposal, nobody appears for respondent nos.1 and 2 though appear to be served.

It appears that on 20/12/2016, after hearing learned Additional Public Prosecutor for applicant, further proceedings in Sessions Trial No. 56/2011 pending on the file of learned Additional Sessions Judge-2, Nagpur were stayed.

This revision is filed against order dated 2/12/2016 passed below Exh. 105 in Sessions Trial No.56/2011 whereby learned Additional Sessions Judge rejected application filed by prosecution for permission to examine Dr. Rujuta Fuke, who had examined victim girl.

Perusal of Annexure I reveals that by said application it was brought to the notice of learned trial Judge that though order was passed to issue bailable warrant, due to oversight same was not issued and in the circumstances, prosecution applied for issuance of fresh bailable warrant in the name of said Medical Officer.

The impugned order, however, reveals that the request made by learned Additional Public Prosecutor was rejected observing that in spite of service, said witness did not turn up and sessions trial cannot be tried in a piecemeal manner.

Having considered fact that witness, who is required to be examined by the prosecution, is Medical Officer, who has examined prosecutrix, her evidence appears to be necessary. It is prima facie found that Medical Officer, in spite of service of notice, could not remain present being on maternity leave and on 18/8/2016 thus order came to be passed for issuance ofailable warrant, which order remained to be complied with due to oversight and in that background, application made by prosecution for issuance of freshailable warrant appears to have rejected by the impugned order.

In the circumstances, revision application is required to be allowed as it is noted that learned trial Judge found evidence of Medical Officer necessary and, therefore, had issuedailable warrant, however, due to oversight, the said order remained to be complied with.

In that view of the matter, criminal revision application is allowed by allowing application (Exh. 105) filed by prosecution. Needless to say that learned trial Court shall take necessary steps for securing presence of Dr. Rujuta Fuke. Stay granted vide order dated 20/12/2016 stands vacated.

JUDGE

khj