

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.625 OF 2018

Bhikchand s/o Panchamlal Kuril,
Age : 66 years, Occu. Labour,
R/o Samrat Chowk, Latur,
Taluka and District Latur

PETITIONER

VERSUS

The State of Maharashtra

RESPONDENT

Mr. Sandip C. Swami, Advocate holding for
Mr. V.D. Gunale, Advocate for the petitioner
Ms. R.P. Gaur, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 21st AUGUST, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. With the consent of the learned counsel for the petitioner and the learned A.P.P., heard finally.

2. The petitioner, who is accused No.1 in Regular Criminal Case (RCC) No.56 of 2010, has challenged the order dated 7th March, 2016, passed by the learned Judicial Magistrate, First Class, Kaij, whereby he has allowed the application (Exh.194) filed under Section 311 of the Code of Criminal Procedure,

1973 ("Code", for short) and directed to issue summons to six witnesses, who are not named in the chargesheet.

3. The learned counsel for the petitioner submits that the prosecution examined eleven witnesses and closed its evidence. Thereafter, the statement of the petitioner came to be recorded under Section 313 of the Code. Thereafter, the present application (Exh.194) came to be filed for issuing summons to six witnesses who were not named in the chargesheet. He submits that the statements of these witnesses were not recorded by the Investigating Officer. According to him, there is absolutely no reason given by the learned A.P.P. in the application (Exh.194) as to why the names of these witnesses were not mentioned in the chargesheet and as to why their evidence was essential for proving the case of the prosecution. He submits that a great prejudice would be caused to the petitioner if at this stage, the prosecution is allowed to re-open its case and examine six witnesses whose statements have not been recorded by the Investigating Officer. He, therefore, prays that the impugned order, which is not legal and proper, may be quashed and set aside.

4. The learned A.P.P. supports that the impugned order on the say that the petitioner is alleged to have collected the price of the foot-wears from six shopkeepers, named in the application (Exh.194). In order to prove the amount that is misappropriated by the petitioner, it is necessary to record the evidence of these six witnesses. According to her, no prejudice would be caused to the petitioner if these six witnesses are allowed to be examined.

5. The application (Exh.194) is totally silent about the reason for not mentioning the names of the proposed six witnesses in the chargesheet. Their statements have not been recorded by the Investigating Officer. No reason has been assigned as to why they are required to be examined, that too after closure of the evidence of prosecution and recording of the statement of the petitioner under Section 313 of the Code. The prosecution has not made out a case as to why the learned Magistrate should use his discretion under Section 311 of the Code in summoning those six witnesses for being examined as prosecution witnesses. No reason has been assigned for not examining those witnesses prior to the recording of statement of the accused under

Section 313 of the Code. The petitioner certainly would be prejudiced if these six witnesses are again called for being examined before the Trial Court in the absence of their previous statements recorded by the Investigating Officer. The petitioner would be taken by surprise since he would have no idea as to what these witnesses are going to state against him. The application (Exh.194) is sans reasons. Such an application could not have been entertained by the learned Magistrate. The learned Magistrate should not have exercised the powers under Section 311 of the Code after the prosecution closed its evidence and the examination of the petitioner under Section 313 of the Code was completed. The impugned order is not at all legal, proper and correct. It is liable to be quashed and set aside.

6. In the result, I pass the following order:-

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) The impugned order is quashed and set aside.
- (iii) Rule is made absolute in the above terms.

(iv) The Writ Petition is accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE

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