

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 181 OF 2018

ALLABAKSH IMMAMSAB SHAIKH., ... Petitioner

Versus

ANIKET SHET AND 2 ORS., ... Respondents

Shri Agha Iftikhar, Advocate for the Petitioner.
Shri P. Talaulikar, Advocate for the Respondent No.1.
Shri P. Shirodkar, Advocate for the Respondent No.3.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 21st March 2018

P.C.

Heard.

2. It was the contention of the learned Advocate appearing for the petitioner that the learned Claims Tribunal did not properly appreciate the case of the petitioner in its proper prospective while holding that it was not a fit case to recall the Investigation Officer and that the said order was required to be quashed and set aside.

3. Shri P. Talaulikar, Learned Advocate for the respondent no.1 contended that the FIR alone was the vital document which was required to be produced through the Investigating Officer recalling his presence and therefore it was in fitness and in the

interest of justice that the learned Tribunal had not exercised its power under section 311 of the Cr.P.C. He further submitted that an omnibus application was made on behalf of the petitioner seeking not only to place reliance on the FIR but other documents without specifying the nature and the identity of the said documents while seeking to recall the Investigating Officer. The respondent therefore had vehemently opposed the application and which could not be allowed even by recourse to the powers of the Court under section 311 Cr.P.C. He placed reliance in State (NCT of Delhi) vs. Shiv Kumar Yadav & anr. [(2016) 2 SCC 402] and submitted that the petition was not maintainable and had to be dismissed.

4. Shri Shirodkar learned Advocate for the respondent no.3 conceded that he has no objection to the reversal of the impugned order and that the petition could be allowed.

5. i have considered their submissions and more particularly the order under challenge apart from the judgment in State (supra). There can be no dispute with the proposition culled out therein qua the powers of the Court under section 311 of the Cr.P.C. At the same time, it cannot be overlooked that the petitioner had maintained the petition under section 166 of the Motor Vehicles Act 1988 which is beneficial piece of legislation. The petitioner primarily sought leave to produce the FIR and the recall of the

Investigating Officer in the interest of justice.

6. Shri I. Agha learned Advocate for the Petitioner in fairness conceded that he was not pressing for any other document except the FIR. Thus considering the beneficial nature of the legislature under which the petition has been filed and as no serious prejudice would be occasioned to the respondent nos.1 and 2, the order under challenge cannot be sustained.

7. In view therefore, the impugned order is quashed and set aside. Nonetheless, it need not be overemphasized that the respondents would have the opportunity to cross examine the Investigating Officer as and when recalled by the petitioner which he shall do at his own cost through the instrumentality of the Court.

8. In these terms, the petition stands disposed off.

NUTAN D. SARDESSAI, J.

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