

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO.20 OF 2018

Bhagwan Gaikwad

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

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Mr.I.M. Khairdi, Advocate for the Applicant.

Mr.A.R. Patil, APP for the Respondent - State.

Mr.Rahul S.Kadam, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 17, 2018.

P.C. :

Applicant is original accused no.1 in criminal case No.232 of 2000, filed by Respondent no.2 under Sections 420, 465, 468, 469, 471 read with Section 34 of IPC. Initially private complaint was filed in which directions were issued under Section 156(3) of Criminal Procedure Code. In pursuant to the directions, investigation was conducted and the charge-sheet was filed.

2 The complainant's case is that the accused had forged the documents by impersonating him and executed the sale-deed. Trial had commenced and the witnesses were examined by the prosecution.

3 The prosecution preferred an application for recall of P.W.1. In the said application, it was stated that the evidence of P.W.1/complainant is recorded by the Court. On perusal of his evidence, it appears that the original of bogus sale-deed was pointed out to him and his evidence is being recorded. The said document was not seized by the police. However, while recording the evidence of the complainant-PW 1, the document was called for from the concerned Court. The said document is not on record and presently it appears to be in the proceedings which are pending before the High Court. It was further stated that PW 2 has referred to the said document and the same was marked as Exhibit - 125. However, the evidence of the complainant was not recorded *qua* the said document at Exhibit - 125. The sale-deed, which was shown to the complainant is not before the Court, and, therefore, it is necessary to show the said document to the complainant, and, it is also necessary to record his evidence in this regard. It was also prayed that similar evidence is required to be recorded in respect to the documents at Exhibits - 154 and 163. In the circumstances, it was prayed that PW 1 be recalled. The said application was preferred on 19th September, 2017. The application was opposed at the instance of the accused.

4 Learned Chief Judicial Magistrate, Solapur, vide order dated 9th November, 2017, allowed the said application and the prosecution was permitted to recall the complainant to adduce evidence only to the extent of Exhibit - 125. While allowing the said application, it was observed by the Court that the evidence of complainant was recorded and at that time, the original disputed sale-deed was on record. However, presently, the said document is not on record of the proceedings. The certified copy of the sale-deed Exhibit-125 which was shown to the handwriting expert while recording his evidence, but, since original sale-deed is not on record, the prosecution is intending to examine the complainant in order to remove the ambiguity that such sale-deed is not on record. The submissions advanced by the prosecution in that regard was accepted by the Court. It is observed that when the original sale-deed is not on record, to consider the contents and nature of the sale-deed, it is necessary to adduce required evidence in respect of the certified copy on record. It is further observed that no prejudice will be caused to the accused as they will have an opportunity to cross-examine the witnesses.

5 Learned counsel for the applicant submits that the application was made belatedly. The prosecution had sufficient opportunity to examine PW 1 *qua* the document referred to in the application. It is submitted that the powers under Section 311 of Criminal Procedure Code cannot be exercised to fill up the lacuna, and, the prosecution by making such an application at the belated stage is trying to do so, which should not be allowed. It is submitted that the evidence of PW Nos.1 and PW 2 was recorded and there was sufficient opportunity to the prosecution to examine the said witnesses in relation to the said document.

6 Learned APP submitted that there is no reason to interfere in the order passed by the trial Court. The witness is sought to be recalled only for the purpose stipulated in the application and the trial Court has made it clear that the witness is required to be examined to consider the contents and nature of the sale-deed, to remove the ambiguity. Learned counsel for respondent no.2/original complainant has reiterated the submissions advanced by the learned APP and, supported the order of the trial Court.

7 On perusal of the application, the say filed by the

accused and the order passed thereon, it is clear that the document which is referred to in the order was before the Court at the time of the evidence of PW 1 was being recorded by the trial Court. However, thereafter, the evidence of PW 2 was recorded and the said document was marked as Exhibit-125. The application was sought to clear the ambiguity with regards to the evidence as it should not be said that the complainant has not adduced any evidence *qua* Exhibit-125. It is only in these circumstances, the application preferred by the prosecution was allowed by the Court to consider the contents and the nature of the sale-deed and to adduce requisite evidence in respect of the certified copy on record. It is true that the powers under Section 311 of Criminal Procedure Code cannot be exercised to fill up the lacuna. However, in the interest of justice, such powers can be exercised at any stage of the proceedings before the proceedings are concluded. It is also pertinent to note that the defence would be given an opportunity to cross-examine the witnesses, which is sought to be recalled. For the reasons stated in the application and the orders passed by the trial Court, I find no reason to set aside the order.

:: ORDER ::

- (i) Criminal Revision Application No.20 of 2018, is rejected;
- (ii) The trial Court is permitted to recall PW 1 and to adduce evidence *qua* the application preferred vide Exhibit-178-D and in consonance with order dated 9th November, 2017;
- (iii) Criminal Revision Application stands disposed of.

(PRAKASH D. NAIK, J.)