

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.300 OF 2018

Natubhai Gomanbhai Patel, Age 46 years, R/o.31, Yogi Sadan, Opp.Silvassa Police Station, Dadra and Nagar Haveli	Applicant
versus	
Union Territory of Dadra & Nagar Haveli Silvassa	Respondent

Mr.Girish Kulkarni i/by M.D.Pareek for applicant.
Ms.PH.Kantharia for Union Government.
Mr.S.R.Shinde, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 12th June 2018

PC :

1. The applicant is prosecuted before the Court of learned Sessions Judge at Silvassa for various offences. The evidence of the witnesses was recorded and even statement of the accused was recorded u/s 313 of Code of Criminal Procedure, 1973. At that stage the Trial Court framed an additional charge u/s 109 of Indian Penal Code vide order dated 1st March 2018 against the applicant.

2. The applicant had challenged the said order before this Court by filing Criminal Writ Petition No.1358 of 2018 which was disposed off vide order dated 6th April 2018 with liberty to the applicant to raise plea of framing vague charge and whether simultaneous prosecution qua offence under Sections 307 and 109 of Indian Penal Code can go ahead when the applicant-accused is already facing a trial for an offence under Sections 307 and 149 of the Indian Penal

Code in view of law laid down by the Apex Court in the matter of Wakil Yadav and another Vs. State of Bihar.

3. Pursuant to the aforesaid order, the applicant preferred an application before the Trial Court on 11th May 2018. In the said application it was submitted that the charge has been added by the Court and vide order dated 1st March 2018 an additional charge has been framed under Section 109 of Indian Penal Code against applicant. It is further submitted that the prosecution was handed over copy of compilation containing video recording of the alleged incident, which fact is revealed in the evidence of PW-8. Subsequent to framing of additional charge, the said compact disk ('CD') becomes relevant for presenting the defence of the accused and, therefore, the defence intends to admit the same by way of procedure contemplated under the provisions of Section 294 of Cr.PC and therefore the same may be marked as exhibit and copy of the same may be provided to the accused.

4. Liberty was also sought to recall or re-examine any other material witness/es including liberty to examine himself as defence witness pursuant to inspection of the CD as well as on account of alteration of the charge. The application was opposed by the prosecution. Learned Sessions Judge rejected the application by order dated 11th May 2018.

5. Mr.Kulkarni appearing for the applicant submits that the charge was altered in accordance with Section 216 of Cr.PC with additional charge u/s 109 of Indian Penal Code. Taking into consideration the evidence of PW-8 and in the light of the additional

charge u/s 109 of IPC, prayers sought by the applicant for exhibiting the CD in evidence, has to be granted otherwise it will cause prejudice to his defence. He further submitted that on account of alteration of the charge, in exercise of powers u/s 216 of Cr.P.C, the accused has a right to recall and re-examine the witness/es in consonance with Section 217 of Cr.P.C. It is submitted that the Trial Court has refused to grant any of the prayers and rejected the application.

6. On the other hand, Ms.Kantharia appearing for respondent-prosecution has submitted that evidence of PW-8 was recorded by the Trial Court. Although he had referred to video-graphing of the incident, the CD was not exhibited in evidence by the prosecution. The said witness was cross-examined by the accused including the applicant and during the course of cross-examination no questions were put to the witness on the CD and no attempt was made for exhibiting the said CD. The applicant is trying to delay the proceedings by making a prayer for exhibiting the said CD. She submitted that the Trial Court has rightly rejected the application on the ground that CD has not been marked as an article and no certificate u/s 65B of Indian Evidence Act has been provided.

7. On perusal of the documents it is apparent that the prosecution had examined all the witnesses. Statement of the accused was recorded u/s 313 of Cr.P.C and thereafter charge was altered and additional charge was framed against the applicant u/s 109 of Cr.P.C.. The order was challenged before this Court and liberty was reserved for the applicant to raise the issue about vagueness of the charge and other infirmities. The charge was also

framed against two persons who were absconding vide order dated 9th September 2016. From the tenor of the order it appears that the applicant had harped upon exhibiting the CD. The applicant has also made a prayer for recalling and re-examining the material witnesses and to examine himself as defence witness. The order dated 11th May 2018 mentions that the prosecution has already closed the evidence and the defence has cross-examined all the witnesses and closed the defence and the accused cannot be permitted to re-open the case at this stage. However, taking into consideration the fact that charge was altered with additional charge u /s 109 of Indian Penal Code qua present applicant, he has a right to recall the witness/es in accordance with Section 217 of Cr.PC. The Trial Court further observed that nothing was pointed out under which provisions of Cr.PC the application was moved for making CD as exhibit. The CD has not been marked as an article and no certificate u/s 65-B of Evidence Act has been provided. Taking into consideration the observations made hereinabove and reasons assigned by the Trial Court for refusing exhibiting the CD, I do not find any reason to interfere in the said order and such a relief cannot be granted. However, the applicant will be at liberty to prefer an application before the Trial Court for recall of the witnesses in the light of additional charge u/s 109 of Indian Penal Code. If the applicant prefers such an application and if the applicant choses to examine any defence witness, the Trial Court shall permit the same. With above observations, Criminal Revision Application No.300 of 2018 is disposed off.

(PRAKASH D. NAIK, J.)