

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

CRIMINAL APPLICATION No.668 OF 2018

Anandidevi Pawan Rajenimbalkar

... Applicant

Vs.

CBI, SCB, Mumbai & Ors.

... Respondents

Mr.R.R. Dube-Patil I/b M/s.Jay and Co. for the Applicant
Mr.H.S. Venegaokar with T.V. Dhotre for Resp. No.1 CBI
Mr.Dhairyasheel Patil with B.V. Mahadik for Resp. No.2
Mr.A.R. Patil, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: OCTOBER 22, 2018

P.C.:

1. This application challenges the orders dated 14.11.2017 and 12.4.2018 passed by the learned Sessions Judge, Mumbai in Sessions Case No.1146 of 2013. The applicant is the wife of the deceased, who was murdered on 3.6.2006 on the Link road to Mumbai – Pune National Highway at Kalamboli. The respondents are the investigating agency and also the accused persons who are facing trial for the offences punishable under section 302, 109 r/w section 34 of the Indian Penal Code. In the said Sessions case, the evidence of the prosecution is over and when the trial

has commenced, the CBI which is the investigating agency, moved application for issuing summons to a witness, namely, Kisan Baburao Hazare (Anna Hazare). The learned Additional Sessions Judge, Greater Mumbai by order dated 14.11.2017 has considered the application and has observed that the evidence in his statement appears hearsay and, therefore, no purpose will be served by examining the witness Mr.Hazare. Therefore, it is held that the prosecution may skip the witness and proceed. The CBI did not challenge the said order and proceed with the matter. After completion of the evidence, the CBI moved second application for issuing summons to Shri Anna Hazare and repeated its request. The said application was opposed by the defence. The learned Judge again by order dated 12.4.2018 rejected the said application (exhibit 329) by giving the same reasons. Hence, this application.

2. The learned Counsel appearing for the applicant/complainant has submitted that this application is moved by the wife of the victim, who was brutally killed by the respondents/accused who are politically influential persons. The learned Counsel has submitted that the evidence of Shri Anna Hazare is very important on the point of conspiracy and on the

point of motive. He submitted that Shri Anna Hazare was also earlier threatened for life by the respondents/accused Shri Padamsinh Bajirao Patil and, therefore, his evidence is required to strengthen the case of the prosecution on the point of conspiracy.

3. The learned Counsel for the respondent No.2 / accused has opposed the application mainly on the ground that the evidence is not relevant. He relied on the order dated 2.4.2011 passed by the learned Additional Sessions Judge, Raigad-Alibag at the time of framing of charge. The learned Counsel has submitted that the learned trial Judge has passed a 20 pages elaborate order where he has discussed this issue and did not frame any charge under section 120B of the Indian Penal Code in respect of the witness Shri Anna Hazare.

4. Mr.Venegaokar, the learned Counsel appearing for the Respondent/CBI, supported the application of the wife of the deceased and relied on the similar applications made by the CBI earlier.

5. At the outset, it is made clear that the Sessions Court has not framed charge in respect of conspiracy under section 120B of

the Indian Penal Code qua eliminating this witness. Therefore, it is ascertained from the statement of Shri Anna Hazare whether he is going to throw light on the point of either motive or conspiracy of killing the deceased. Mr. Hazare in his statement recorded under section 161 of the Code of Criminal Procedure, has stated about an incident of one of the accused threatening him of life during the enquiry before the Justice Sawant commission. However, the said incident had taken place in 2002. The incident of murder of Pawan Rajenimbalkar took place in 2006. Thus, there is no correlation between the threats given to him in 2002 and the murder of the deceased.

6. After going through his statement recorded under section 161 of the Code of Criminal Procedure, it is found that he has not claimed direct knowledge of the facts either on the point of motive or conspiracy. Whatever allegations he has made against the accused are based on indirect knowledge and thus, it is rightly held by the learned Sessions Judge that the evidence will be hearsay as the other witnesses from whom he derived knowledge, are not examined by the prosecution. Hence, no interference with the impugned orders is required. Application is dismissed. The trial to proceed.

7. The learned Counsel for the applicant submits that this Court had stayed the trial by order dated 13.6.2018 by granting interim order dated 13.6.2018. He submits that the trial Court is going to record the statements of the accused under section 313 of the Code of Criminal Procedure and hence, the said stay be continued as the applicant wants to test this order before the hon'ble Supreme Court. In this case, the evidence is already recorded. The incident of murder is of 2006 and in view of the reasoning given above, the prayer for continuation of the stay is rejected. The trial Court to proceed on the next date.

(MRIDULA BHATKAR, J.)