

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

CRIMINAL WRIT PETITION NO.2263 OF 2016

Savitri alias Sumitra Gouda

.. Petitioner

Vs.

The Inspector of Police & Anr.

.. Respondents

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Mr.P.R. Dave a/w. Mr.Ravi Kotian i/b Mr.C.S. Patil, Advocate for the Petitioner.

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

Mr.Kamlesh Jathar, API, D.B. Marg Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 2, 2018.

P.C. :

Petitioner is facing prosecution for the offences punishable under Sections 3, 4, 5, 6 and 7 of Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as “the PITA Act”, for short). Charge was framed against the petitioner for the said offences. Prosecution examined witnesses. Thereafter statement of the petitioner and the accused was recorded under Section 313 of Criminal Procedure Code

2 After statement of the accused was recorded under Section 313 of Criminal Procedure Code, the petitioner had

preferred an application before the trial Court on 9th February, 2016, under Section 294 of Criminal Procedure Code. In the said application, the prosecution was called upon to admit or deny the documents viz. (i) the Ration Card bearing number 384212 issued by the Rationing Office for the rationing area 9A in the name of Madhavi Poojari and her family members at the address of Room No.A-40, 4th Floor, Jamna Mansion, 14th Khetwadi, Mumbai, on the basis of application No.3295663; (ii) Bill No.390296 dated 17/5/2012, issued by Bharat Gas (Bharat Petroleum '1') bearing consumer No.70004011 in the name of Kamala Poojari resident of A-40, Jamna Mansion, Fourth Floor 14th Khetwadi, Mumbai.

3 The said application was rejected by the trial Court on 14th June, 2016. While rejecting the said application, it was observed that the documents attached with Exhibit-40 are not verified by the accused so also from the document of Gas Agency filed along with application vide Exhibit-40, it reveals that it is dated 17th May, 2012, and the date of issue of ration card is not visible, as it is the xerox copy. The accused has not produced original, so as to enable the Court to scrutinize it. The available xerox copy of Gas receipt dated 17th May, 2012, reveals that it is issued after the date of raid. It is part of record that raid was

conducted on 17th April, 2012, so also from the overall evidence, it seems that the accused has not touched this point throughout of the prosecution. On the basis of the said observation, the application was rejected.

4 Petitioner, thereafter, preferred an application under Section 311 of Cr.P.C. on 5th April, 2016. In the said application, it was prayed that the accused be given an opportunity to examine defence witnesses, particularly, examine Rationing Officer for the Rationing Area, 9A Bombay 400 004 with a direction to produce Application No.3295663 submitted by Madhavi Poojari in respect of Room No. A-40, Jamna Mansion, Khetwadi, Mumbai, along with report of the Rationing Inspector and such other relevant document relating to issuance of Ration Card No.384212, as well as Proprietor/Partner of Nutan Gas Agency, situated at 5A, Vijay Chambers, Opposite Dreamland Cinema, Padamji Road, Mumbai - 400 004, with a direction to produce all the papers concerning Consumer No.70004011, standing in the name of Kamla Poojari resident of A-40, Jamna Mansion, 14 Khetwadi, Mumbai, as well as the witness relating to Marketing and/or Sales Officers of Bharat Gas under the control of Bharat Petroleum, situated at Opposite Building No.52, Tagor Nagar, Vikhroli, Mumbai-83 with

direction to produce all the record relating to allotment of Bharat Gas to Consumer No.70004011, in the name of Kamla Poojari. Learned counsel for the petitioner, on instructions, however, submitted that the third witness referred to above may not be relevant and he is not pressing for examination of the said witness.

5 It is submitted that although in the concluding paragraph of Statement recorded under Section 313 of Cr.P.C., it is stated that she do not examine any defence witness, on perusal of the evidence which is already recorded by the Court, it was felt that the accused shall examine the defence witness or rely upon the documents referred to herein above for adducing defence evidence. It is submitted that in the light of the observations made by the trial Court rejecting the application under Section 294 of Cr.P.C., it was thought fit and proper to call upon those witnesses to produce the documents and hence the application for examining defence witness as stated in the application preferred vide Exhibit-44, was prayed for. The said application was rejected on 14th June, 2016, on the ground that the application under Section 294 of Cr.P.C. was rejected by the said Court.

6 Learned APP submitted that the petitioner had not produced the original documents and for the reasons stated in the order dated 14th June, 2016, the application was rejected. It is submitted that the sole idea of the accused is to protract the proceedings. It is submitted that the Court has rightly rejected the said application.

7 Learned counsel for the petitioner further submitted that although the aforesaid order was passed in the year 2016, trial has not proceeded further and the same is pending for arguments and is listed for arguments on 3rd August, 2018. The application under Section 294 was rejected primarily on the ground that the accused had not produced original document and he was relying upon the xerox copies.

8 The accused is at liberty to raise appropriate defences by examining himself/herself or by examining any other defence witness. In the light of the rejection of the application under Section 294 of Cr.P.C., petitioner had preferred the subsequent application for examining the defence witness. The said application ought not to have been rejected by the trial

Court. The accused must be given a fair opportunity to defend herself. In the earlier application preferred under 294 of Cr.P.C., it was stated that on perusal of evidence, which is recorded by the Court, it was necessary to bring on record the documents submitted therein. Considering the aforesaid circumstances, without expressing any views on the legality or merits of the documents, the petitioner intends to bring on record by examining the defence witness, the application preferred vide Exhibit-44, can be allowed.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Writ petition is allowed;
- (ii) Trial Court is directed to permit the petitioner to examine the defence witnesses listed at Serial Nos.(i) & (ii) in the prayer Clause of application dated 5th April, 2016 (Exhibit - 44);
- (iii) Writ Petition is disposed of accordingly.

(PRAKASH D. NAIK, J.)