

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2997 OF 2018

Masaji Genu Kale	Petitioner
versus	
The State of Maharashtra	Respondent

Mr.Amol A. Patankar for petitioner.
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 24th July 2018

PC :

1. This is a petition challenging the order dated 20th June 2018 passed by the Court of Judicial Magistrate, First Class, 2nd Court, Thane. The petitioner is facing prosecution for offences under Sections 354 and 509 of Indian Penal Code. He is government servant and presently working as Police Inspector at Pimpri Police Station. The complainant is also police personnel.

2. The petitioner preferred an application for recalling PW-2 to PW-7. Learned Magistrate partly allowed the said application recalling PW-7, who was the investigating officer for cross examination. From the documents on record it appears that the proceedings are pending before the Trial Court since last about six years. The prosecution had examined about seven witnesses. The cross examination of PW-1 was conducted at the instance of defence. Thereafter the evidence of PW-2 was recorded and he was partly cross examined by the defence. It appears that thereafter the petitioner-accused did not remain present and hence the Court proceeded to pass the order dated 20th November 2017 of no cross. It is also

apparent that witness PW-3 to PW-7 were not cross examined by petitioner-accused and the Court proceeded to pass the order of no cross. However, pursuant to the order dated 20th June 2018, PW-7 was recalled for conducting cross examination and the defence has cross examined him partly. Next date of hearing before the Trial Court is 8th August 2018. It is submitted that the witnesses stated hereinabove could not be cross examined on account of several circumstances. It is submitted that the advocate representing the petitioner had declined to appear for him and that the petitioner was required to change his lawyer. It is submitted that for not conducting the cross examination of the said witnesses, grave prejudice will be caused to the petitioner and he would not be in a position to lead his defence in proper perspective. It is thus submitted that in the interest of justice, the witnesses be recalled. It is also submitted that in the event the Court recalls the said witnesses, the petitioner-accuse will not delay the cross examination of the said witnesses and the advocate representing him would proceed with the cross examination immediately.

3. Learned APP pointed out the documents on record and submitted that the petitioner-accused has delayed the proceedings. He was given several opportunities but he remained absent and even warrants were required to be issued against him. The change of lawyer is no ground for recalling the witnesses.

4. It is true that the proceedings are pending since last about six years. The Trial Court was also constrained to issue warrants against petitioner. However, the warrants were subsequently cancelled. The Trial Court has recalled PW-7 and has been partly cross examined by petitioner's advocate and his further cross examination is in progress.

It is pointed out that PW-2 was partly cross-examined and subsequent cross examination could not be concluded. Although petitioner did not proceed with the cross examination, for just decision of the case, the witnesses can be recalled and the petitioner can be directed to cross examine the said witnesses without further delay. The power u/s 311 of Code of Criminal Procedure, 1973 can be exercised in time before conclusion of the trial for just decision of the case. In the interest of justice and considering the fact that defence of accused will be prejudiced by not cross examining the said witnesses, the order passed by the Trial Court is required to be set aside.

5. In the circumstances, I pass following order :

ORDER

- (i) The impugned order dated 20th June 2018 to the extent it declines to recall witnesses PW-2 to PW-6, is set aside. The Trial Court is directed to recall the said witnesses;
- (ii) Petitioner's advocate shall proceed with the cross examination of PW-2 to PW-6 after they are recalled and when they remain present before the Court for cross examination;
- (iii) The petitioner shall not further delay the proceedings before the Trial Court;
- (iv) The petitioner is directed to pay costs of Rs.5,000/- to be paid to Law Library of Thane Bar Association and shall produce the receipt thereof on record of this petition within two weeks from today.

(PRAKASH D. NAIK, J.)