

Vidya Amin.

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

WRIT PETITION NO. 4507 OF 2018

Vivek Krishnamurari Srivastava	...	Petitioner
vs.		
Union Territory of Dadra & Nagar Haveli & Anr.	...	Respondents

Mr. Ghanshyam Upadhyay a/w. Kamalesh Mishra i/b. Law Juris,
Advocate for the petitioner.

Mr. H.J. Dedhia, Spl. P.P. for respondent no. 1.

Mrs. Rutuja Ambekar, APP for respondent no. 2/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 17th October, 2018**

P.C. :

Upon mentioning, taken on production board.

2. Rule. Rule made returnable forthwith. In this Writ Petition, short point is involved, hence, by consent, it is decided at the stage of admission on the first date.

3. This Petition is filed under section 482 of Criminal Procedure Code praying that the order dated 25th September, 2018 passed by the learned Sessions Judge, Silvassa in Sessions Case No. 15 of 2012 is to be quashed and set aside by invoking the powers under section 482 of Cr.P.C. .

4. Sessions Case No. 15 of 2012 where the petitioner/accused is facing charge of murder under section 302 of Indian Penal Code. The entire trial is over and arguments were concluded on 21st August, 2018, however, the learned Judge has mentioned in his order that he could not start dictation, as the post of stenographer is vacant since 1st July, 2018. But when he commenced the dictation, in between, he thought that as the prosecution has tendered the evidence of CDR, the evidence of tower locations is required, so the learned Judge on 25th September, 2018 called the counsel of both the sides and after hearing them, he by invoking the powers under section 165 of the Evidence Act directed the Investigating PW-36 Mr. H.C. Rathod to place list of tower locations after obtaining details from the respective mobile service within the period of two weeks from today. The said order is challenged in this Writ Petition.

5. The learned counsel for the petitioner has submitted that this order is passed during the midst of dictation and this will cause prejudice to the accused.

6. Learned APP has submitted and made clear that the prosecution has relied on the record of call details of certain

mobiles and also the tower numbers and that evidence is very relevant.

7. Perused the impugned order, so also the notes of evidence of PW-25 Zahid Yasim Khan and PW-26 Bhavik Arvind Joshi, which is produced before this Court.

8. The prosecution has tendered the evidence of CDR and the numbers of the towers. No further evidence is required. It is a matter of appreciation of evidence. In view of this, it is not necessary to invoke powers under section 165 of Evidence Act. Hence, following order is passed:

- (i) The order dated 25th September, 2018 passed by the learned Sessions Judge, Silvassa is hereby quashed and set aside;
- (ii) Writ Petition is allowed;
- (iii) The learned Sessions Judge, Silvassa to proceed with the matter.

(MRIDULA BHATKAR, J.)