

Anand

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

CRIMINAL APPLICATION NO. 1496 OF 2016

Nayana Rajan Guhagarkar .Applicant

Age : 51 yrs

Address : Chawl No. 479 / 2707,

Mahesh Nagar, Chowk,

Near Maruti Mandir,

Sant Tukaram Nagar, Pimpri,

Pune.

Vs.

The State of Maharashtra

.Respondent

Through Yerwada Police Station,

Mr. A. U. Nikam, Advocate, for the Applicant

Mr. H. J. Dedhia, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 24.01.2018

ORAL ORDER

. Heard learned counsel for the parties.

2. Rule.

3. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal.

4. By this Application, the Applicant has impugned the Order dated 10.11.2016 passed by the learned District Judge – 5 and Additional Sessions Judge, Pune, by which the Application (Exh. 26) preferred by the prosecution to examine Sanjay Sutar (husband of Complainant PW.1 Sujata Sutar) under Section 311 of the Code of Criminal Procedure (for short “Cr.P.C.”) came to be allowed and accordingly, witness summons came to be issued.

5. Learned counsel for the Applicant submitted that the learned Judge had erred in law by allowing the said Application i. e. Exh. 26, as there were no valid reasons / grounds, to summon and examine Sanjay Sutar, under Section 311 of Cr.P.C.. He submitted that the prosecution cannot be permitted to fill in the lacuna in the prosecution evidence. He submitted that admittedly, the witness sought to be summoned i. e. Sanjay Sutar's statement was not recorded under Section 161 of Cr.P.C. nor was he cited as a witness at any time, prior to the commencement of the case. He submitted that if the examination-in-chief of PW.1 – Sujata Sutar is seen, neither is there any evidence nor is there any material on record to show, that her husband Sanjay Sutar was present at the time of the incident or around that time.

6. Learned APP opposed the Application. He submitted that examination of Sanjay Sutar is essential, as the Applicant had also demanded the bribe amount from Sanjay Sutar. He submitted that no interference is warranted in the impugned order.

7. Perused the papers. The Applicant – accused is facing prosecution for the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. After investigation, charge-sheet was filed as against the Applicant. According to the prosecution, the Complainant – Sujata Sutar had closed her industry and had cancelled her sales tax registration and that pursuant thereto, had applied for refund of the VAT amount. It is alleged that the Applicant demanded some amount for the purpose of clearing the VAT refund amount from the Complainant (PW.1). Charge was framed as against the Applicant for the aforesaid offences. The prosecution commenced with the examination of its witnesses i. e. PW.1 – Complainant Sujata Sutar and PW.2 – shadow witness. It appears that the evidence of PW.1 including cross-examination was over on 26.08.2016 and the evidence of PW.2 i. e. shadow witness was over on 01.09.2016. On 28.09.2016, the prosecution filed an Application (Exh. 26) under Section 311 of Cr.P.C. and prayed that witness summons be issued to PW.1 –

Complainant's husband. The reason cited in the said Application (Exh.26) was that the Application for refund of VAT deposit was submitted by PW.1 – Complainant's husband i. e. Sanjay Sutar, to the Sales Tax Department and that the Applicant had also demanded bribe from Sanjay Sutar. The said Application was resisted by the Applicant. The learned Judge, after hearing the parties allowed the said Application.

8. A perusal of the examination-in-chief of PW.1 – Complainant, shows, that there is no evidence on record, which shows that her husband – Sanjay Sutar was present at any point of time with her. Admittedly, the statement of Sanjay Sutar has not been recorded by the police under Section 161 of Cr.P.C. and as such, he has not been cited as a witness. It also appears that when the cross-examination of PW.1 – Complainant commenced, Sanjay Sutar was present in the Court, through out the recording of her evidence. It is for the first time, in the cross-examination of PW.1 – Sujata Sutar, that certain admissions have come with regard to Sanjay Sutar. Considering the same, the prosecution filed an Application under Section 311 of Cr.P.C. seeking to examine Sanjay Sutar.

9. In the peculiar facts of this case, having regard to the material on record, the Application filed by the prosecution seeking examination of Sanjay Sutar under Section 311 of Cr.P.C. was clearly misconceived. It appears that the object of examining Sanjay Sutar is to fill up the lacuna in the prosecution evidence which cannot be permitted.

10. Accordingly, the Application is allowed. The impugned Order dated 10.11.2016 passed by the learned District Judge – 5 and Additional Sessions Judge, Pune below Exh. 26 in S. C. No. 70 of 2015 is quashed & set aside.

Rule is made absolute in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)