

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 42 OF 2019

LAVEEN PILLE

... Applicant

Versus

STATE OF GOA, THR. LEARNED P.P.
AND ANR.

... Respondents

Shri D. Bharadwaj, Advocate for the applicant.

Shri G. Nagvenkar, Additional Public Prosecutor for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 17th December, 2019

P.C.:

Heard Shri D. Bharadwaj, learned Advocate for the applicant and Shri G. Nagvenkar, learned Additional Public Prosecutor for the respondents.

2. It is the contention of Shri Bharadwaj, learned Advocate that the witness whose examination was allowed pursuant to an application under Section 311 CrPC was not listed in the Chargesheet nor was examined at any earlier point of time on behalf of the State. Yet, the learned JMFC allowed his examination on the specious premise that he had filed an

affidavit before the Motor Accident Claims Tribunal in the related accident case and that the applicant would have ample opportunity to meet his case by cross-examining him. This was a fit case to interfere with the order under challenge as grave prejudice would be caused to the applicant.

3. The learned Additional Public Prosecutor on the contrary contended that there are plenary powers with the Court to allow an application under Section 311 CrPC. Besides, the person sought to be examined had filed an affidavit claiming to be an eyewitness to the accident which had taken place on 01/06/2014 and had also been examined as a witness before the Motor Accident Claims Tribunal. The question whether he had filed such an affidavit for monetary gain or otherwise could be considered on the merits of the case and therefore the prosecution be given ample opportunity to prove its case against the applicant on the aspect of the rashness and negligence. No interference is called for with the order under challenge and the application had to be dismissed.

4. i have heard the submissions of Shri D. Bharadwaj,

learned Advocate for the applicant and Shri G. Nagvenkar, learned Additional Public Prosecutor for the respondents. It is apparent from the records that the said Agnelo Fernandes had stated on oath that he had witnessed the accident and which prevailed on the mind of the learned JMFC to consider his examination on behalf of the prosecution. The learned JMFC had kept the option open for the prosecution to examine him as a witness being an eyewitness and taken within its sweep the objections raised by the applicant which could be considered at the appropriate stage and when he would have the opportunity to cross examine the witness. The learned JMFC had also considered the objection raised by the applicant that the said Agnelo Fernandes was a stock witness and he was otherwise related to the wife of the complainant and therefore his testimony could not be relied upon. However, taking into account the fact that the learned JMFC had weighed the considerations relevant for the case before it and that the applicant would have ample scope to cross examine the witness, no illegality or perversity is apparent in the impugned

order. In view thereof, no interference is called for with the order under challenge.

5. Shri Bharadwaj, learned Advocate also contends that it was an attempt to fill in the lacunae in the prosecution case. The question whether the examination of this witness is an attempt by the prosecution to fill in the lacunae would be borne out from the records when the applicant cross-examines the witness and his testimony would be put to test on the anvil cross examination. It would be open to the learned JMFC to weigh the evidence and consider whether the examination of the witness was as an afterthought and was to fill in the lacunae. That aspect cannot be a ground to consider the legality and otherwise of the order under challenge.

6. In the result therefore nothing survives in the application and the same stands dismissed.

NUTAN D. SARDESSAI, J.

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