

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 220/2019

Tarunjit Tejpal

... Petitioner

Versus

1. State of Goa & anr.

... Respondent

Mr. S. G. Desai, Senior Advocate with Mr. Pavithran AV and Mr. Amir Khan, Advocates for the Petitioner.

Mr. S. Rivankar, Public Prosecutor for the State-Respondent.

Coram :- C. V. BHADANG, J.

Date : 18th October, 2019.

ORAL ORDER

1. This petition is mentioned before this Court for urgent relief as the regular Court taking up the matter is not available. Heard finally by consent of parties.

2. The petitioner, who is facing prosecution for the offence punishable under Sections 354(A), 376, 376 2(k) of the Indian Penal Code before the learned Sessions Judge at Mapusa in Sessions Case No.10/2014 is challenging the order dated 07.10.2019, scheduling the Sessions Case for further examination of the prosecutrix/Pw.1 on 21.10.2019, 22.10.2019 and 23.10.2019 as it is a matter which has been expedited by the Hon'ble Supreme Court. The petitioner

wants the Sessions trial to be adjourned to 02.12.2019 onwards.

3. I have heard Mr. Desai, the learned Senior Advocate for the petitioner, who submitted that the petitioner has engaged Advocate Mr. Shrikant Shivade, Senior Advocate, from Pune to defend him. It is contended that Advocate Mr. Shivade is busy in five part heard cases out of which four are in Mumbai and one at Pune which are also expedited cases and, therefore, he is unable to attend the Sessions Court in the month of October and November, 2019. It is submitted that under Section 307 of the Code of Criminal Procedure, the petitioner has a right to be defended by an Advocate of his choice. It is submitted that this is also necessary for ensuring that there is a fair trial and the petitioner gets a fair opportunity to defend himself which is part of his fundamental right under Article 21 of the Constitution of India. The learned Senior Advocate has referred to the decision of the Supreme Court in the case of **State of Kerala vs. Rasheed, AIR 2019 SC 721**, in which the Supreme Court has, inter alia, directed the trial Court to prepare a detailed case calendar at the commencement of the trial, after framing of charge, which has to be scrupulously adhered to. It is submitted that no such calendar has been drawn. The learned Senior Advocate has pointed out that the

law declared by the Hon'ble Supreme Court is binding under Article 141 of the Constitution of India. It is pointed out that even the prosecution had sought time as the prosecutrix/Pw.1 was not available on account of commitments both in India and abroad till 04.11.2019 and, therefore, the Sessions Judge was not justified in fixing the case on 21.10.2019.

4. The learned Senior Advocate has pointed out to a subsequent development in which Advocate Mr. Shivade has been advised to undergo surgery and Advocate Mr. Shivade has expressed that he does not want to disrupt the programme set for the trial of the Sessions Case particularly when the witness is also attending. He has referred to an email to that effect dated 18.10.2019. Mr. Desai, the learned Senior Advocate has submitted that even if some other Advocate is engaged he will take sometime to prepare himself in the matter. He, therefore, submits that the learned Sessions Judge be directed to postpone the date of recording of evidence of Pw.1.

5. Mr. Desai, the learned Senior Advocate for the petitioner, has pointed out that the Supreme Court by the order dated 19.08.2019 in Criminal Appeal No.1246/2019 has

directed the trial to be concluded at the earliest within a period of six months from the date of the receipt of the order by the learned Sessions Judge. It is pointed out that the copy of the order has been received by the Sessions Judge on 07.10.2019 and, therefore, the period of six months would expire on/about 07.04.2020 and there is sufficient time even if the recording of evidence starts somewhere in the first week of December or even earlier as may be directed by this Court.

6. Mr. Rivankar, the learned Public Prosecutor, has pointed out that the chief examination of the Pw.1 has been partly recorded. He points out that although initially Pw.1 had expressed difficulty in attending the Court prior to 04.11.2019, after the learned Sessions Judge had fixed the matter on 21.10.2019 to 23.10.2019, a summons was issued which has been served on the Pw.1 and she has also intimated that she has obtained leave and made all travel arrangements to remain present before the Sessions Judge on 21.10.2019 onwards. He, therefore, submits that now it may not be possible to disrupt the programme particularly when the matter is expedited by the Hon'ble Supreme Court.

7. Mr. Rivankar, the learned Public Prosecutor for the

respondents, on instructions from the Investigating Officer, has pointed out that there would be about 75 witnesses which the prosecution proposes to examine and, therefore, the trial has to start at the earliest.

8. I have carefully considered the submissions made. Time was granted to the learned Public Prosecutor to take instructions as to whether the summons is served on the Pw.1 and whether she has made travel arrangements. The learned Public Prosecutor after taking specific instructions has made a statement that Pw.1 has already obtained leave and has made travel arrangements to come down to India from 21st October to 24th October, 2019. As per the order dated 19.08.2019 passed by the Hon'ble Supreme Court, the trial is required to be concluded at the earliest within a period of six months from the date of the receipt of the order which, according to the learned Counsel for the petitioner has been received by the learned Sessions Judge on 07.10.2019. Even considering that the period of six months would expire on or about 07.04.2020, this Court has to take note that according to the prosecution there are about 75 witnesses which are to be examined. Therefore, the trial has to proceed with due expedition in order to be concluded within the time fixed by the Hon'ble Supreme Court. I also find that as per the communication

dated 18.10.2019 which was produced during the course of the arguments at bar, the ground about unavailability of Advocate Shivade may also not be available now.

9. There cannot be any manner of dispute that a party or an accused is entitled to be represented by an Advocate of his choice. However, this is not a case where the petitioner has been disallowed to be represented by any such Advocate. The issue is entirely about the expeditious conduction of the trial within the period as fixed by the Hon'ble Supreme Court. Insofar as the decision in the case of **Rasheed** (supra) is concerned, the learned Sessions Judge has already fixed the Sessions case for recording of evidence of Pw.1 on 21st, 22nd and 23rd October, 2019 and it is for the learned Sessions Judge to draw a detailed case calendar for further conduction of the trial.

10. In my considered view, in the given circumstances, where the Pw.1 has already made her travel arrangements to come down to India from UK from 21st to 23rd October, 2019 and further having regard to the direction of the Hon'ble Supreme Court for expeditious and time bound disposal of the Sessions case, it is not possible for this Court to interfere with

the dates and the program so fixed. The petition is accordingly dismissed.

C. V. BHADANG, J.

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