

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

WRIT PETITION NO. 760 OF 2017

Rajendrasinha Walkishorsinh Rajawat ...Petitioner

Versus

The State of Maharashtra ...Respondent

Harshad Bhadbhade - Advocate for the petitioner.
Rutuja Ambekar – APP for the respondent – State.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 16th OCTOBER 2019.

P.C. :

The petitioner has been charged with the offences under Section 396, 397 and 120(b) of IPC and Section 3 (25) of Indian Arms Act 1959.

2. In Sessions Case No. 15 of 2014, the District and Sessions Court, Ratnagiri, recorded the evidence of all the prosecution's witnesses. But when it was recording the evidence of the investigating officer, first, it let the prosecution marking all the panchanamas through the IO. Then, the Sessions Court seems to have allowed the prosecution to play a video footage in the open Court and let the IO give evidence based on that displayed video. To this procedure, the petitioners objected, and later filed this Criminal Writ Petition. This Court, through its order dated 8.03.2017, observed thus:

“2. Perusal of the evidence recorded of the Investigating Officer on 3rd January, 2017 shows that the learned Judge has permitted viewing of the C.D. containing C.C. TV footage in open Court by the Investigating Officer and asked him to described the contents of the C.C. TV footage as part of his deposition. This is not permissible in law. Thus the grievances of the petitioner are prima facie justified. However, considering the fact that the trial is at the fag end, with the evidence of the Investigating Officer being recorded, it is necessary that the petition is disposed off finally at the stage of admission. Hence, stand over to 29th March 2017.”

3. Incidentally, the petitioner also wanted the case transferred from the Court of the District and Sessions Judge to another competent Court.

4. Now the petitioner's counsel submits that though the petitioner has been enjoying its stay, it serves no purpose if the matter is kept pending for long. First, he brings to my notice that the prayer concerning the transfer of the case to another court does not survive. According to him, now another presiding officer has taken charge. So the petitioners' apprehension stands allayed. He no longer needs the case transfer.

5. Second, about the manner of recording the evidence, the learned counsel submits that even this Court's in its order, dated 8.03.2017, *prima facie* found that the course adopted by the Sessions Court is impermissible. In this context, he has drawn my attention to the Supreme Court's *Bipin Shantilal Panchal v. State of Gujarat & Anr.*¹. It will suffice, according to

¹ 2001 3 SCC

him, if the trial Court recalls the investigating officer and records his evidence in terms of the direction given in *Bipin Shanitlal Panchal*. The learned APP agrees for this proposal.

6. Heard Shri Harshad Bhadbhade, the learned counsel for the petitioner, and Mrs. Rutuja Ambekar, the learned counsel for the respondent.

7. Indeed, the petitioner sought the following prayers:-

A) That this Hon'ble Court may be pleased to call for records and proceedings in respect of Sessions Case No. 15 of 2014 pending before the filed of Ld. Sessions Judge, Ratnagiri.

B) That after perusal of records and proceedings this Hon'ble Court may be pleased to quash and set aside the order dated 02.05.2016 passed by the Ld. Sessions Court allowing the application filed by the Prosecution in Session Case No. 15 of 2014.

C) That in the interest of justice this Hon'ble Court may be pleased to transfer the Sessions Case No. 15 of 2014 from present court to any other Sessions Judge at Ratnagiri.

D) That this Hon'ble Court may be pleased to direct the Ld. Sessions Court to delete/expunge evidence recorded on 03.01.2017 of Investigating Officer in Sessions Case No. 15 of 2014 and further be pleased to direct Ld. Sessions Judge to de-Exhibit CD as well as Photographs.

E) That this Hon'be Court may be pleased to direct the Ld. Sessions Court to allow the advocate for the Petitioner to cross examine the Investigating Officer in respect of C.D. and such Cross-examination if conducted shall not be treated as admission on part of the petitioner to exhibit of C.D. as exhibit and read in evidence.

F) That pending the hearing and final disposal of the present writ petition this Hon'ble Court may be pleased to stay further proceedings in respect of Sessions Case

No. 15 of 2014....”

8. Now the petitioner’s counsel gives up prayer clauses B and C; as he put it, they have already become infructuous.

9. Therefore, in terms of prayer clause D, I hold that the learned District and Sessions Court will eschew the investigating officers’ evidence so far recorded and will recall him for fresh deposition. Then it will follow the procedure as mandated in para 14 and 15 of *Bipin Shantilal Panchal*.

Accordingly, I dispose of the Writ Petition. The interim protection, if any, granted earlier stands vacated.

[DAMA SESHADRI NAIDU, J.]