

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

CRIMINAL WRIT PETITION NO.1424 OF 2019

Anil Bhagwan Mhaske : **Petitioner.**
Versus
The State of Maharashtra : **Respondent.**

Mr. Satyavrat Joshi for the Petitioner.
Mr. N B Patil, APP for the Respondent/State.

CORAM : S. S. SHINDE, J
DATE : 20th June 2019

P.C.

1 By this Writ Petition the Petitioner, who is the original accused, challenges the order dated 10/01/2019 passed by the learned Additional Sessions Judge, Pune by which order the application (Exhibit 71) filed by the accused for setting aside order dated 28/11/2018 about closing of evidence of defence and for recalling of witness Dr. Dube came to be rejected.

2 The facts giving rise to filing of this Writ Petition, in brief, can be stated thus :-

The Petitioner herein who is the original accused had set on fire his wife, the deceased. The police of Vishrantwaid Police Station has recorded the dying declaration of the deceased. During the course of treatment the deceased has succumbed to the burn injuries. The FIR bearing C.R.no.114 of 2013 came to be registered against the accused. After completion of investigation charge sheet has been filed in the Court. After framing the

charge, the prosecution has examined its witness and thereafter has filed evidence closed pursis. Thereafter the learned Sessions Judge, Pune has recorded the statement of the accused under Section 313 of the Criminal Procedure Code. Thereafter the Petitioner herein i.e. the accused examined himself as Defence Witness No.1 and has filed application for witness summons to Dr. Dube. In spite of service of summons the said doctor did not appear before the Court for giving evidence. The Trial Court therefore passed the order dated 28/11/2018 thereby closing the defence evidence. Therefore the accused has filed the present application (Exhibit 71) for setting aside the order dated 28/11/2018 and recalling the witness by re-issuing the witness summons to Dr. Dube. As stated herein above, the Trial Court has rejected the said application (Exhibit 71) by the impugned order dated 10/01/2019 which is taken exception to by way of the present Writ Petition.

3 Heard the learned counsel for the parties. The learned counsel appearing of the Petitioner herein i.e. original accused submitted that initially the deceased was attended by the said witness Dr.Dube and the deceased has given the history of burn injury to Dr. Dube, however, the prosecution has suppressed the said material fact. He further submitted that denial of opportunity to the accused to lead evidence has serious repercussions which would tantamount to unfair trial. He submitted that in spite of service of summons in Sasoon Hospital, Pune, nobody appeared before the Court for

deposing in view of witness summons. He further submitted that the Petitioner has shown due diligence in securing the presence of the said Doctor. He therefore submitted that the Trial Court ought to have taken coercive action to secure the presence of the said doctor before the Court. He contended that the trial court has not appreciated the grounds and/or the reasons given by the accused for recalling the said witness. He also submitted that the purpose of Section 311 of the Criminal Procedure Code is for giving an opportunity to the accused to undergo a free and fair trial. The learned counsel for the Petitioner invites this Court's attention to the contents of the said application filed for recalling of Dr. Dube as defence witness. He lastly contended that if the accused did not get an opportunity to examine the said witness, it would cause serious prejudice to the case of the Petitioner. He therefore prays that the Writ Petition may be allowed.

4 On the other hand the learned APP for the Respondent/State invites this Court's attention to the reasons assigned by the learned Additional Sessions Judge, Pune in the impugned order and particularly in paragraphs 4 and 5 thereof and submits that, though the opportunity was given to the Petitioner to produce the said witness in his defence, however, the Petitioner has failed to produce the said witness. It is submitted that the trial has to be concluded within a reasonable time and in the present case the accused is in jail since his arrest and the prosecution evidence is closed prior to one and half

year of the date of passing the impugned order. It is also submitted that even the arguments of the APP before the Trial Court has been concluded and accused has examined himself as defence witness No.1. The learned APP also submitted that sufficient opportunity was given to the accused to secure the presence of the said witness, however, the accused has not taken steps to secure the presence of the said witness. The learned APP therefore submits that the Petition may be rejected.

5 Having heard the learned counsel for the parties, I have bestowed my anxious consideration to the rival contentions. Upon careful perusal of the observations made by the trial court in paragraph 4 of the impugned order, it appears that the accused has examined himself as defence witness on 05/02/2018, and since then till passing of the impugned order, the matter was fixed for securing the presence of the defence witness i.e. the medical officer. From time to time the summons was issued to the said witness. The summons was re-issued. The services reports were on record. The learned Additional Sessions Judge has further observed that on 01/09/2018 last chance was given and again on 26/09/2018 and 17/10/2018 the summons was reissued. It was further observed that on 01/11/2018 and 17/11/2018 the matter was kept for awaiting report. It is also observed that the last summons service report is dated 04/10/2018 and on that day last chance was given but no proper steps were taken by the accused to secure the presence of defence witness though

sufficient opportunity was given to him. It is also observed that previously also the evidence of defence was closed on 06/07/2018 on similar ground that presence of witness was not secured by taking proper steps. Therefore it appears from the observations made by the Trial Court in paragraphs 4 and 5 of the impugned order that since opportunity was given to the Petitioner and, the trial was at the stage of completion of recording of evidence, as also the prosecution evidence was closed, the accused examined himself, the arguments of the APP were also completed, and therefore, now belatedly in the month of June 2019 it may not be desirable to accede to the prayer of the Petitioner to recall the witness. If the prayer of the accused is granted, it may stall the trial which is at the verge of completion.

6 The Apex Court in the catena of decisions held that speedy trial is the fundamental right of the accused and the court seized with the trial shall endeavour to complete the trial expeditiously.

7 In that view of the matter, no case for interference in the impugned order is made out. The Writ Petition stands rejected.

[S. S. SHINDE , J]