

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

CRIMINAL APPLICATION NO. 405 OF 2018

Mr.Dhirajlal Jamnadas Shanghvi

...Applicant

Versus

State of Maharashtra and Ors.

...Respondents

Mr.Abhay D. Parab for the Applicant.

Mrs.G.P.Mulekar, APP for Respondent No.1-State.

Mr.T.Usman i/b. Mr.S.R.Gaud for Respondent No.3.

Mr.Kapil P. Shah a/w. Mr.Jay Varia for Respondent No.4.

CORAM : S.S. SHINDE, J.

DATE : 16th SEPTEMBER 2019

P.C.:

1. Learned Counsel appearing for the applicant submits that the name of the witness viz. Ajitkumar Singh Kesliwal is very much cited in the list of witnesses submitted by the prosecution agency. He further submits that the said witness is necessary to be examined, therefore, an application was filed by the applicant through prosecution agency. However, the said application was rejected on the ground that the name of the said witness is not mentioned in the chargesheet. He further submits that the applicant is a tenant and, therefore, the applicant wants that his deposition may be recorded before the Court so as to strengthen the case of the applicant. The

applicant is a tenant of the said land, which has been encroached by contesting respondents. Learned Counsel invites attention of this Court to the grounds taken in the application along with annexures thereto and at the cost of repetition, he prays that the application may be allowed.

2. On the other hand, learned Counsel appearing for contesting respondents invites attention of this Court to the reasons assigned by the learned Magistrate in the impugned order, and submits that neither in the first complaint, which was filed by the applicant, nor in his deposition the applicant has referred the name of the said proposed witness viz. Ajitkumar Singh Kesliwal and, therefore, belated attempt of the applicant to issue summons to the said witness at the stage of recording the statement of the accused under section 313 of the Code of Criminal Procedure is rightly turned down by the trial Court. He further submits that the applicant has already initiated civil proceedings before the Civil Court. Therefore, relying upon the reasons assigned in the impugned order, learned Counsel submits that the application may be rejected.

3. Heard learned Counsel appearing for the applicant and learned Counsel appearing for contesting respondents. Perused the reasons assigned by the learned Magistrate in the impugned order. The learned Magistrate has recorded that neither in the first complaint, which was filed by the applicant, nor in his deposition before the Court, he has made a reference in respect of the said witness viz. Ajitkumar Singh Kesliwal. The learned Magistrate has also observed that the applicant by filing an application for examination of proposed witness, has tried to fill up the lacuna, which is not permissible. The said application is filed at the stage of recording the statement under section 313 of the Code of Criminal Procedure, is not in dispute.

4. Upon careful perusal of the first complaint filed by the applicant, it appears that the name of the said witness - Ajitkumar Singh Kesliwal is not mentioned. The prayer of the applicant to summon the aforementioned witness is at belated stage, and if granted would protract the trial. In view of the reasons assigned in the impugned order, this Court is not inclined to entertain the application and the same stands rejected.

5. At this stage, learned Counsel appearing for the applicant prays for stay to the implementation of the order. However, the said prayer is vehemently opposed by the learned counsel appearing for contesting respondents since the matter is pending for considerable period before the trial Court. Since the application was filed by the applicant at the stage of recording the statement under section 313 of the Code of Criminal Procedure, granting stay to the proceedings would further delay the disposal of the case, hence this Court is not inclined to entertain the prayer of the applicant and to delay the further proceedings before the trial Court. Such prayer is rejected.

(S.S. SHINDE, J.)