

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

CRIMINAL WRIT PETITION NO. 2175 OF 2018

Venkatesh S. Naidu

...Petitioner

Versus

Kanakia Police Station

...Respondent

Mr. Tushar Jadhav for the Petitioner.

Mr. A.R. Patil, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 03rd SEPTEMBER 2019

P.C.:

1. This Petition takes an exception to the impugned order dated 06.12.2017 passed by the Vth CJJD and JMFC District Court, Thane in Summary C.C. No. 4830 of 2012.

2. Respondent herein lodged complaint bearing C.C. No. 4830 of 2012 with the Kanakia Mira Road Police Station. In the said complaint the Petitioner herein is added as accused. The Petitioner is presently facing trial arising out of the aforesaid complaint. It is the case of the Petitioner that, during the course of hearing of the aforesaid complaint the Petitioner was called upon for examination, accordingly, the Petitioner deposed and presented himself for the purpose of cross-examination. The said examination / cross-examination was conducted on 10.10.2015, 02.03.2016, 13.07.2017

and 29.07.2017. It is the case of the Petitioner that upon perusing the transcript of evidence of the Petitioner as witness on 10.10.2015, 02.03.2016, 13.07.2017 and 29.07.2017, the Petitioner noticed there are some glaring discrepancies, mistakes and omissions which, according to the Petitioner had the possibility of seriously causing prejudice to the case of the Petitioner as witness. Therefore, the Petitioner filed application on 26.09.2017 taking recourse to Section 311 of Cr.P.C for re-examination of the Petitioner. In the said application the Petitioner mentioned the reason for re-examination. Pursuant to filing said application the prosecution filed reply to said application. By the impugned order dated 06.12.2017 learned J.M.F.C. Thane rejected the application of the Petitioner. Hence, this Petition.

3. Learned counsel appearing for the Petitioner invites attention of this Court to the grounds taken in the Petition and also the order passed by the Trial Court and submits that, in case Petitioner is not given opportunity again to step in witness box by invoking Section 311 of the Cr.P.C, there will be irreparable loss to the Petitioner and would cause serious damage to the case of the Petitioner. In support of the aforesaid contentions learned counsel appearing for the Petitioner placed reliance on reported judgments of the Hon'ble Supreme Court

in the case of Natasha Singh Vs. Central Bureau of Investigation¹ and Gajendra Singh and Ors. Vs. State of Rajasthan² and submitted that, in the interest of justice the Trial Court may be directed to invoke section 311 of the Cr.P.C, and allow the Petitioner to step in witness box.

4. On the other hand learned APP appearing for the Respondent – State submits that, the application filed by the petitioner was after 2 months from the date of recording of the evidence. It is submitted that the recording of evidence of the petitioner was completed on 13th July 2017 and the Petitioner filed an application on 26th September 2017. It is submitted that, the Trial Court recorded the evidence of Petitioner in open Court in presence of the witnesses and opponent, thereafter, belatedly after two and half months of recording of said evidence, the prayer of the petitioner to correct deposition or for that matter allow the petitioner to exhibit the documents / evidence produced before the Court cannot be countenanced and legally unsustainable.

5. Heard counsel appearing for the Petitioner and learned APP appearing for Respondent - State for considerable period. With

1 (2013) 5 SCC 741

2 (1998) 8 SCC 612

their able assistance perused the pleadings, grounds taken in the Petitioner, annexure thereto and impugned order passed by the learned J.M.F.C. Thane. It appears that, the matter was fixed by the Trial Court for recording the evidence of the Petitioner on 10.10.2015, 02.03.2016, 13.07.2017 and 29.07.2017. It is observed by the Trial Court that at the time of recording the evidence, the Petitioner did not object for recording of said evidence which was done in the open Court in presence of the other side. The opportunity was also given to the Accused – Petitioner to state before the Court that, when he will complete the recording of evidence and by reasoned order the Trial Court has rejected the application filed by the Petitioner.

6. Upon scrutiny of the contention and grounds taken in the Petition and also the annexures thereto, no case is made out to cause interference in the impugned order. When the recording of evidence of the petitioner has been done in the open Court in presence of the Petitioner and also the other side. An attempt by the Petitioner to file aforesaid application belatedly after laps of considerable period can not be countenanced and deserves no consideration since his evidence was recorded in open Court in presence of relevant witnesses and prosecution. Hence, it is not possible to accede to the prayer of the

Petitioner to allow his application under Section 311 of the Cr.P.C, and then allow him to record his evidence once again, so as to correct earlier depositions and also allow him to exhibit the documents. There is no perversity in the reasons / findings recorded by the Trial Court. Hence, there is no valid reasons for this Court to invoke writ jurisdiction and entertain the prayer of the Petitioner. In that view of the matter Writ Petition stands rejected.

7. However, it is made clear that in case recording of evidence of the Petitioner is not yet complete as per the record of the Trial Court, the Trial Court shall allow the Petitioner to complete the remaining evidence by recording the same preferably on the next date fixed by the Trial Court. The Petitioner will be at liberty to raise the grievance raised in the application below exhibit - E, at the stage of arguments on completion of recording of the evidence by the Trial Court.

8. The observations made herein above are *prima facie* in nature and confined to the adjudication of the present petition only.

(S.S. SHINDE, J.)