

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3935 OF 2019

Nagraj Mohanlalji Surana & Ors. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Kiran Jain i/b. Kiran Jain & Company for petitioners.
Mr. Kunal Waghmare, Advocate for Respondent No. 2/MCGM.
Mr. Asif Nagvi for Respondent No. 3 to 5.
Mr. Vinod Chate, APP for Respondent/State.

CORAM : **S. S. SHINDE, J**
DATE : **8th August 2019**

P.C.

1. Heard learned counsel appearing for the petitioners and learned counsel appearing for the respective respondents.

2. This petition takes an exception to the order dated 20th July 2019 passed by the Metropolitan Magistrate 41st Court, Shindwadi, Dada, Mumbai, thereby rejecting the prayer of the petitioner to recall the Pest Control Officer (PW 2) for cross examination.

3. Learned counsel appearing for the petitioner submits that, since the Advocate on record was in personal difficulty and therefore, did not remain present on 12th July 2019 to cross examine the Pest Control Officer (PW 2). He fairly submits that, earlier also an application was filed by the Petitioners for

recalling the Pest Control Officer (PW 2) and accordingly Pest Control Officer (PW 2) was recalled for cross examination on 12th July 2019. He further submits that, on the said date, prayer for adjournment was rejected by the learned Judge, therefore, the associate/advocate of the petitioners partially cross examined the Pest Control Officer (PW 2). It is submitted that, due to the absence of Advocate on the said date, the petitioners should not suffer, therefore, learned counsel submits that, one more opportunity may be given to the petitioners to cross-examine the Pest Control Officer (PW 2). He submits that, on the given date, Advocate on record will cross examine the Pest Control Officer (PW 2) and will not pray for further date or adjournment.

4. On the other hand, learned counsel appearing for Respondent No. 2 and Respondent No. 3 to 5 vehemently opposed the prayer and submits that, once application for recalling the Pest Control Officer (PW 2) was allowed at the instance of the petitioners, second successive application was filed only to delay/protract the proceedings pending before the Trial Court. Therefore, they jointly submits that, prayer for recalling the Pest Control Officer (PW 2) for cross examination may be rejected.

5. Upon perusal of the impugned order, it is abundantly clear that, the application filed by the petitioners for recalling the Pest Control Officer (PW 2) was allowed and pursuant to the said order of allowing application,

Pest Control Officer (PW 2) was summoned for cross examination on 12th July 2019. However, Advocate for the petitioners was not present and second application was filed. By any stretch of imagination filing of such successive applications with same prayer cannot be countenanced. However, I find considerable force in the arguments of learned counsel appearing for the petitioners that due to absence of Advocate on record or for his mistake, the litigants i.e. petitioners should not suffer. Therefore, the ends of justice would met in case Pest Control Officer (PW 2) is recalled for cross-examination on next date i.e. 9th August 2019 before the Trial Court and is allowed to cross examine by the Advocate for petitioners.

6. In the light of discussion made herein above, the impugned order dated 20th July 2019 passed by the learned Metropolitan Magistrate 41st Court, Shindwadi, Dadar, Mumbai, thereby rejecting the prayer of the petitioners to cross examine the Pest Control Officer (PW 2), stands quashed and set aside.

7. Pest Control Officer (PW 2) to remain present on 9th August 2019 for cross examination. However, the prayer to cross examine the Pest Control Officer (PW 2) is allowed, subject to cost of Rs. 10,000/- to be deposited in the Registry of the Trial Court on 9th August 2019.

8. The proceeding of CC No. 9687/SS/2015 stands expedited. The Trial Court to make an endeavor to expedite the hearing of the aforesaid proceedings and take it to the logical end as expeditiously as possible, however, within 4 months from today.

9. With the above observations, writ petition is allowed to the above extent and same stands disposed of accordingly.

10. Parties to act upon an authenticated copy of this order.

[S. S. SHINDE , J]