

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 535 OF 2019

Viraf Nadir Sodawaterwala	]	... Applicant
Versus		
The State of Maharashtra		
& Anr.	]	... Respondents

Mr. Shivkumar Mishra i/b Mr.Vijendra Jabra for applicant.

Mr.Vinod Chate, APP for respondent No.1-State.

Mr.Kushal Mor for respondent No.2.

CORAM : N.J. JAMADAR, J.
DATE : 6th DECEMBER, 2019.

P. C. :-

1. Heard the learned counsels for the parties.
2. The learned counsel for the applicant submits that he has no instructions in the matter and the learned advocate, who has filed this revision application, is out of India and therefore seeks an adjournment.
3. Ordinarily, a request for adjournment is not denied when personal inability of the counsels is urged. However, the facts of the instant case indicate that the application before the learned Special

Judge in SEBI Special Case No.78 of 2014 was wholly misconceived and the instant revision against the order passed by the learned Special Judge thereon, is equally frivolous.

4. It would be suffice to extract the Roznama, dated 9th January 2017 in SEBI Special Case No. 149 of 2006, which is the foundation of the application (Exh.32) preferred by the applicant before the learned Special Judge. It reads as under :-

<u><i>“09.01.2017</i></u>	<i>CORAM : H.H. THE SEBI SPECIAL JUDGE, SHRI M.G. DESHPANDE, (C.R. NO.22)</i>
<i>SEBI SPL Case 78/14</i>	<i>Ld. SPP Kushal Mor for SEBI present. Mr. Dhumal Officer of SEBI present. Ld. Adv, for accused present. Accused present.</i>
	<i>Charge was framed on 19.01.2016 but till date SEBI has not led any evidence. It appears that SEBI has not interested to led the evidence. Hence, case is posed for Statement U/s. 313 of Cr.P.C. Matter adjd. To 06.02.2017 for Statement U/s. 313 Cr.P.C.”</i>

5. The aforesaid order of the learned Judge, dated 9th January 2017 indicates that on account of default on the part of the prosecution to lead evidence, the learned Judge came to the conclusion that the prosecution was not interested in leading evidence and thus directed that the matter be posted for recording statement under section 313 of

the Code of Criminal Procedure, 1973 ('Code'). However, subsequently on 6th February 2017, the evidence of the witness for the prosecution came to be recorded.

6. The applicant, banking upon the aforesaid order dated 9th January 2017, preferred the application (Exh.33) on the premise that once the matter was posted for recording statement under section 313 of the Code, the learned Sessions Judge could not have recorded the evidence in the matter and it be, thus, posted only for recording statement under section 313 of the accused. By the impugned order dated 26th September 2019, the learned Special Judge rejected the application.

7. It is evident that before 9th January 2017, no evidence of prosecution was recorded. If the prosecution had not led any evidence, there was no occasion for putting any incriminating material, appearing against the accused, to the accused which is the purpose of the examination under section 313 of the Code. Merely because the learned Judge, with a sense of indignation for default on the part of prosecution, directed that the matter be listed for recording statement under section 313 of the Code, does not imply that the right of

prosecution to lead the evidence stood foreclosed. Eventually, when the learned Special Judge, on the next date, recorded the evidence of the prosecution witness, the trial has to proceed in accordance with the procedure prescribed in the Code. The applicant cannot be permitted to take advantage of the incorrect posting of the matter, by the order dated 9th January 2017.

8. In the aforesaid view of the matter, the learned Special Judge was justified in rejecting the application. No interference is warranted in revisional jurisdiction. Hence, the revision application stands dismissed.

(N.J. JAMADAR, J.)