

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

CRIMINAL WRIT PETITION NO. 5538 OF 2018

Chandan Suraj Jaiswal and Anr.

...Petitioners

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Mahesh Waswani a/w. Ms. Shreya Tiwari i/by Mr. Farooque Ansari for the Petitioner.

Mrs. M.R. Tidke, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 27th SEPTEMBER 2019

PER COURT :

1. At the outset learned counsel appearing for the Petitioner submits that, so far as relief claimed in terms of prayer clause 'B' he will resort to appropriate remedy. He on instructions submits that, petitioner is not pressing relief in terms of prayer clause 'E'. However, he submits that the Petition deserves consideration so far reliefs claimed in terms of prayer clauses 'F', 'G' and 'H'. Learned counsel submits that, on the date fixed for hearing the application at Exhibit – 88, Advocate Mr. Mahesh Waswani, who was regularly appearing before the Trial Court, was not available and application at Exhibit – 92 was filed before the Trial Court for adjournment. It is submitted that, it was specifically stated in the said application that the

Advocate Mahesh Waswani was before the Supreme Court on the said date in some other matter. It is submitted that, the Trial Court ought to have acceded to the prayer of the petitioner for adjournment on the said date. Learned counsel further submits that, if the Defence Witness No. 2 is recalled for further re-examination no prejudice will be caused to the prosecution. Therefore, learned counsel for the Petitioner relying upon the pleadings, grounds taken in the Petition and contents of respective applications submit that, petition deserves to be allowed in terms of prayer clause 'F', 'G' and 'H'.

2. On the other hand learned APP appearing for Respondent – State invites attention of this Court to the reasons assigned by the learned Trial Court and submits that, the learned Trial Court has given the reasons for not allowing the application of the Petitioners for adjournment at Exhibit 92. It is submitted that, so far as prayers of the petitioners for recalling the Defence Witness No. 2 is concern the said witness has already examined and recording of evidence is completed and matter is fixed for final arguments by the Trial Court. It is submitted that, even the relief in terms of prayer clause 'F' deserves no consideration inasmuch as the impugned order passed by the learned Trial Court at Exhibit – 88 is reasoned ordered.

3. Heard the counsel appearing for the Petitioners and learned APP appearing for Respondent – State. Perused the pleadings in the petition,

grounds taken therein and the contents of the respective applications and orders passed on respective applications. So far as application at Exhibit – 92 is concern, in the said application it was stated that, the applicants Advocate Mahesh Waswani who is conducting the Trial is appearing in the matters before the Supreme Court on 13th November 2018 and therefore, the prayer for adjournment of two weeks was made. However, application for examining the Defence Witness No. 2 was filed, the same was rejected by the Trial Court. Since the Advocate for the accused was not available on the said date, the learned Trial Court ought to have considered the prayer for adjournment. However, so far as recalling the defence witness is concerned, as rightly submitted by the learned APP since the defence witness has been examined, the Trial Court has rightly rejected the said prayer for recalling the defence witness, and to that extent relief claimed in terms of prayer clause ‘G’ stands refused / rejected. However, so far as the prayer of the Petitioners to play CD or DVD or Pen Drive is concerned the learned Trial Court has passed the order in absence of arguing Advocate for the Accused. In that view of the matter order below Exhibit – 88 and 92 is quashed and set aside and the Petitioners are given liberty to file the fresh application confined to the extent of prayer of petitioners to play the CD or DVD or Pen Drive which was subject matter of application below Exhibiit – 88.

4. Needless to observe that, if the application is filed by the

petitioners availing the liberty granted by this Court, the concern Court to decide the said application keeping in view the observations made in this order and on its own merits and in accordance with law.

5. Writ Petition is partly allowed and disposed of accordingly.

(S.S. SHINDE, J.)