

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CRIMINAL WRIT PETITION NO. 93 OF 2019

(Bhagwan Shivramji Patekar..vs.. State, thr PSO, PS Frezarpura, Amravati & ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.R. Masurkar, counsel for petitioner.

Mr. A.D. Sonak, Addl. Public prosecutor for respondents.

CORAM : P.N. DESHMUKH AND
ROHIT B. DEO, J.

DATED : 28-02-2019

Prayer in this application is to direct the learned trial Court to hear Special (ACB) Case No. 7 of 2008 pending on his file on day-to-day basis and to expeditiously conclude the same since petitioner, who is facing this trial, is aged 72 years and recording of evidence in above case is commenced on 15.11.2014 and same is still in progress as evidence of P.W. 34 as Investigating Officer is being recorded.

By filing Pursis Stamp No. 1087 of 2019, learned counsel for petitioner has placed on record certified copy of Roznama, according to which, case is now adjourned for recording evidence of PW-34 on 8.3.2019. Considering above stated facts, this Court by passing order dated 20.2.2019 called explanation and reasons from concerned Court for having recording of evidence of PW 34 – Investigating Officer and in compliance to it, learned Registrar (J) has placed on record communication received from learned Ad-hoc District

Judge-1 and Assistant Sessions Judge, Amravati, who stated that after he resumed his duties on above stated post at Amravati on 4.6.2018, case was before him for the first time on 31.10.2018 and was thereafter adjourned to January 2019. According to the reasons given, on six dates prior to 30.10.2018, evidence of P.W. 34 was recorded by the learned Predecessor of said officer. It is thus stated that evidence of P.W. 34 has been commenced during the tenure of earlier Presiding Officer on 14.9.2015 and after learned Judge took over charge on 4.6.2018, he has recorded evidence only on two dates. The explanation given does not seem satisfactory in view of the fact that it is nowhere mentioned as to why long dates are given. Even if the learned Judge resumed his duties on 4.6.2018 and the matter was before him for the first time on 31.10.2018, he adjourned the matter to 5.1.2019. He did not assign, any reason for grant of such a long adjournment to the part-heard matter. In fact, on the earlier date, it is also noted that, after evidence of PW-34 was commenced on 14.9.2015 and further evidence was recorded on 20.11.2015, case was adjourned to 16.8.2017 i.e. almost, after two years which act and mode of recording evidence by the trial Court can not be accepted for any reason nor it can be tolerated, more particularly when the case is against an accused who is senior citizen admittedly 72 years old.

In that view of the matter, reasons put-forth by

the learned Judge that his experience is that, in most of the cases, three or more dates are taken by both sides for recording examination-in-chief and cross-examination of the witness, does not stand for any reason more particularly in the absence of any explanation for insisting of such long adjournments without sufficient reasons.

Similarly, with reference to recording evidence in piecemeal, reason submitted is that, learned counsels for both sides are responsible, which explanation again does not stand for any reason as it is for the concerned Court, to monitor and control its board more particularly, in part-heard matters. Though we are aware of the fact that the Courts are heavily burdened with number of civil and criminal cases, we expect from the trial Courts to hear the part heard matters preferably on day-to-day basis and to grant adjournment only if exceptional case is made out. Even in such scenario adjourned dates should not be as long as two or three months as is found granted in the present Special Case.

In that view of the matter, we direct learned trial Judge who is seized with Special (ACB) Case No. 7 of 2008 to expeditiously and conclude recording of evidence of PW-34 by recording the same preferably on day-to-day basis without granting adjournment without sufficient reason within two weeks from the date of receipt of this Writ.

From the Roznama dated 4.2.2019 matter is noted to be adjourned on receipt of communication from Superintendent of Police, Buldhana to 21.2.2019 when PW-34 is shown absent however the learned trial Court appears to have failed to take steps to secure presence of said witness, without considering the fact that his evidence is part-heard since 14.9.2015.

Observing as aforesaid, we allow the petition with direction to the trial Court to complete evidence of PW 34 – Girish Yashvant Bobde and conclude the trial preferably within two months. So far as explanation with regard to recording incorrect Roznama is concerned, same is accepted.

Registrar (J.) to communicate this order by Email to the concerned Court and on seeking compliance, place the same before us.

Copy of this order be sent to Registrar (J.).

JUDGE

JUDGE