

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CRIMINAL WRIT PETITION NO.79 OF 2020

Bhanudas Lobhaji Vaidya,
Age 59 yrs., Occ. Retired,
R/o Jaibhavani Nagar, Asarjan,
Nanded.

... Petitioner.

... **Versus** ...

The State of Maharashtra
Through Police Station Officer,
Umri Police Station,
Dist. Nanded.

... Respondent.

...

Mr. S.S. Bore, Advocate for petitioner

Mr. B.V. Virdhe, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23rd JANUARY, 2020

JUDGMENT :

1 Rule. Rule made returnable forthwith.

2 Issue notice to the respondent. Learned APP waives notice for the respondent. With the consent of both the parties the matter is taken for hearing immediately.

3 It appears that once again the petitioner is before this Court to challenge the order below Exh.105 in Special (ACB) Case No.2/2014. It will not be out of place to mention here, that he was earlier before this Court in Criminal Writ Petition No.1992 of 2019, which was decided by this Court on 17.12.2019. Following order was passed on that day.

ORDER

- I) Writ petition stands allowed.
- II) Impugned order dated 03.12.2019 passed in Special ACB Case No.02 of 2014 by learned Additional Sessions Judge, Bhokar is hereby set aside.
- III) Accused to pay cost of Rs.6,000/-. It be deposited before the trial Court within a period of 15 days from the next date before the trial Court i.e. 20.12.2019.
- IV) Accused should submit the list of the witnesses to whom he want to examine. As per the statement made by the learned Advocate for the petitioner, the accused want to examine two more witnesses. Therefore, the list shall not be more than two.
- V) Thereafter, the learned Additional Sessions Judge to issue witness summons to those witnesses and complete the work of recording evidence within a period of one month and then to take up further steps as per law.

4 The learned Advocate appearing for the petitioner submits that though this Court had categorically stated, that the list of the witnesses to be

submitted on behalf of the accused, shall not be more than two, yet, somehow the learned Advocate, who is representing the accused-petitioner before the Trial Court, had given the list of four witnesses. The learned Trial Court has rightly called upon the applicant to specify any two witnesses from the list given to whom the witness summons to be issued as per the order of this Court. But then it appears that the learned Advocate, who is representing the accused before the Trial Court, had disagreement with the learned Judge and it appears that with arrogance it was stated, that the Judge may pass any order, the applicant-accused would challenge it. The learned Advocate appearing for the petitioner submits that the entire application itself has been rejected and now the matter is kept on 27.01.2020 for arguments. He prays once again, that this Court may permit the petitioner to examine two witnesses and makes a statement that the accused would choose those two witnesses on 27.01.2020.

5 The learned APP is supporting the order passed by the learned Trial Judge and submits that it has been elaborately stated, as to how the petitioner is killing time, though the matter is of 2014. He had gone up to Hon'ble Apex Court, challenging the order of this Court, dismissing the Writ Petition No.1730 of 2018 on 16.09.2019 in Special Leave Petition (Cri.) Diary No.36626 of 2019. The said petition before the Hon'ble Apex Court has been

dismissed on 16.12.2019. Therefore, the costs, that has been imposed as well as rejection of the application, was proper.

6 As aforesaid, this Court, in Criminal Writ Petition No.1992 of 2019 decided on 17.12.2019, had granted liberty to examine two more witnesses only and the list of witnesses, which was permitted to be given by the accused, was limited to two witnesses only, this was as per the instructions those were received by the learned Advocate for the petitioner from the petitioner-accused himself. Now, there could not have been some different instructions by the petitioner to his Advocate, who is representing him before the learned Trial Court. Therefore, when the learned Judge had called upon the applicant to specify the name of two witnesses, to whom he wants to examine as per the order passed by this Court, the learned Advocate who is representing the petitioner before the Trial Court ought to have given names of two persons only. It appears from the order, that has been passed by the learned Trial Court, that the learned Advocate who is representing the accused is unnecessarily adopting delaying tactics and instead of discharging his duty as Officer of the Court, he is disputing the facts and acting contrary to the orders of this Court. Such conduct is absolutely not proper on the part of the learned Advocate. Even if it is accepted, that a party has right to challenge the orders passed by the Courts, yet, the purpose of the challenge

cannot be to protract the matter. When, as per the statement of the accused, the liberty was granted to him to examine two witnesses in defence, then only that liberty ought to have been taken by the petitioner before the Trial Court. The learned Advocate representing the accused-petitioner before the Trial Court ought to have in fact, told his client, even if for the sake of argument it is accepted, that the accused had then the intention to examine four witnesses that he cannot choose that option, since on his own statement, this Court had granted the liberty to him to examine two witnesses only. The only course, that was available to the accused, was to choose amongst those four persons, the two persons, to whom he wanted to examine as a defence witness. Instead of doing that, it appears that the learned Advocate for the accused, as aforesaid, has made the statement, that the Judge may pass any order as the applicant-accused would challenge it. At the costs of repetition, it can be said, that this conduct on the part of learned Advocate for the accused is not proper.

7 Whatever may have happened, for that purpose, the different course is available by way of imposing further costs. But when the liberty was granted to the accused to examine two witnesses at least that is required to be granted again, and therefore, once again, by allowing the present writ petition, the impugned order passed below Exh.105 in Special (ACB) Case

No.2/2014 by learned Additional Sessions Judge, Bhokar dated 09.01.2020, is hereby set aside.

8 Accused to choose the names of two witnesses amongst the names of four witnesses given in Exh.105 and pursis to that effect be filed before the learned Trial Court on 27.01.2020, and thereupon the learned Trial Court to issue summons to those two witnesses only and examine those witnesses.

9 Further, as per the directions given in Writ Petition No.1992 of 2019, the learned Additional Sessions Judge to complete the work of recording of evidence, within a period of one month from 27.01.2020, and then to take up the further steps, as per law.

10 Apart from the costs, that has been imposed by the learned Trial Judge of Rs.5,000/- while rejecting application Exh.105, the petitioner should deposit amount of Rs.20,000/- before the learned Trial Court on 27.01.2020.

11 Rule is made absolute in above said terms.

(Smt. Vibha Kankanwadi, J.)