

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1107 OF 2020

Manoj s/o Chhagan Kamble
Age: 24 Yrs., occu. Labour,
R/o Jalgaon, Tq.Ambejogai,
District Beed, at present
at Perne, Tq. Haveli,
District Pune. = PETITIONER

VERSUS

The State of Maharashtra
Through Police Station,
Gandhi Chowk, Latur, Tq.
And Dist. Latur. = RESPONDENT

Mr.Satish S.Manale, Advocate for Petitioner
Mrs.RP Gour,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 7th October, 2020.

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith by
consent of learned Advocates for the parties and
taking into consideration the issue involved.

2. Present petitioner is facing trial, i.e.
Special (POCSO) Case No.09/2016. Now, it is before
Extra Joint Additional Sessions Judge, Latur. In
all, nine witnesses have been examined. As regards
witness No.10, who is an Investigating Officer, it

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is stated that, his examination-in-chief was recorded on 7.9.2020. PW 10 – Sanjay Gite had come from Parbhani for evidence. On that day, there was an application on behalf of the present accused for adjournment. However, the learned Trial Judge has come to the conclusion that no sufficient reason has been shown for adjourning the matter when he has not filed medical certificate. Thereafter, order of proceeding the matter, without cross-examination of PW 10 Gite by the present accused, came to be passed. An application has been filed at Exhibit 131 for re-call of the witness. It was stated in the application that the learned Advocate, who is conducting the matter on behalf of accused No.1, is 87 years old person and he has been orally advised by his doctor not to go out of the house due to pandemic situation. It was also stated that present petitioner resides in Pune district and the area, where he was residing, was declared as Containment Zone and, therefore, he could not come to the Court at Latur and take cross. It was further stated that if cross is not conducted on behalf of accused No.1 to the Investigating Officer, then there would be serious

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prejudice to the accused and, therefore, a prayer was made to allow to conduct the cross-examination of PW 10 Gite.

3. An important point to be noted is that the Special PP gave Say that appropriate order may kindly be passed.

4. After hearing both sides, learned Extra Joint Additional Sessions Judge, Latur rejected the application on 14.9.2020 on the ground that medical certificate has not been produced and it has not been explained as to how serious prejudice would be caused to accused No.1 if he is not allowed to cross-examine the said witness. It was also stated that the case is old one and the matter is fixed for statement of the accused under Section 313 of Cr.P.C. This order is challenged in this Writ Petition.

5. Accused No.1, i.e. present petitioner, has prayed for invoking Constitutional powers of this Court under Article 227 of Constitution of

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India, to set aside the order of allowing the application at Exhibit-131.

6. In order to cut short, it can be said that the learned Advocate appearing for the petitioner has made submissions supporting the petition. He has especially pointed out the Standard Operating Procedure (SOP) ordered by Hon'ble the Chief Justice and Hon'ble Judges of the Administrative Committee of this Court, which are applicable to all the subordinate Courts falling under the control of this Court. It has been pointed out that the cases, in which substantial evidence is recorded and either of the parties to the proceedings agree to examine witness through video conferencing or on commission, the concerned Judge, in his discretion, may allow such examination with a rider that the witnesses shall not be compelled to attend the Court for such examination. Further, it has been pointed out that it was directed that the Judicial officers may also generally refrain themselves from taking coercive action, such as passing ex-parte orders, issuance of warrants to the accused and witnesses etc.

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Further, the entire procedure would make it clear that it was not contemplated that, regular functioning of the Court should be undertaken in such situation and, therefore, the learned Trial Judge ought to have granted adjournment. Further, when it was specifically pointed out that the advocate, who is representing him, is 87 years old person then the learned Trial Judge ought not to have insisted his presence for the purpose of cross-examination. He ought to have then allowed the application for re-call of the witness when all these facts have been shown.

6. At the outset, it is to be noted that the Standard Operating Procedure has been given for the purpose of smooth functioning of the Courts and also taking into consideration the pandemic situation, precautionary measures, those were expected to restrain spreading of the virus and, therefore, the learned Trial Judge was duty bound to observe the said SOP. In fact, he ought not to have gone ahead with the examination-in-chief of the Investigating Officer, which appears to have been recorded on 7.9.2020. Though we are now in the

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stage of un-locking; yet the SOP still exists and, therefore, every subordinate Court of this Court is expected to follow the SOP. As aforesaid, liberty was given to examine the witnesses if both the parties agree to take evidence through Video Conferencing or on Commission, compelling the witness to come for evidence is prohibited. In fact, the interesting part is that the Investigating Officer, who is a Police Officer, how he could get time to leave his duty from Parbhani and to come to Latur for evidence in such pandemic situation when, in fact, the Police Officers were burdened with duty of maintaining law and order situation as well as fighting out against the virus. Even if we consider that the situation was rather better on 7.9.2020 than what it was in lockdown; yet there was absolutely no hurry that his evidence should be taken on that day. He could have come again as it would be an official duty for him to attend the Court and give evidence. Rejecting the application for adjournment and passing order of proceeding the matter without the cross on behalf of accused No.1 would amount to adverse order which was prohibited under the SOP.

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It is clearly stated that the Judicial Officers may not pass any adverse order owing to the absence of the parties to the proceedings. It cannot be restricted that the word "parties" mentioned herein is "litigant" only. It includes "Advocates" also. Therefore, the said order passed below Exhibit-128, proceeding the matter without cross-examination of accused No.1, is unsustainable. The learned Judge ought to have taken a liberal view when it comes to pandemic situation and the issue is related to the health of the general public. Time and again, the Governmemnts are issuing various guidelines so that the spreading of virus is curtailed.

7. Order dated 13.7.2020 passed by Collector/District Magistrate, Latur has also been produoced, wherein there was extension of the lockdown and the order under Section 144 of Cr.P.C. was made applicable.

8. After the Application at Exh. 131 was filed for re-calling of the order on Exh.128, another opportunity was available to the learned Special Judge to show leniency and allow cross-

examination of Investigating Officer on behalf of accused No.1. However, it has been rejected though it appears that he had knowledge about advanced age of learned Advocate representing accused No.1. He ought not to have insisted for medical certificate. Expecting such certificate in such situation is too harsh and beyond humanity. Definitely there is importance to the evidence of the Investigating Officer and where right is available to cross-examine him and it has been so withheld, definitely it would amount to prejudice to the accused. Though the case might be old one; yet justice cannot be hurried in such a way. The order of rejection of application at Exh. 131 is totally wrong, erroneous, illegal and illogical.

9. It is also to be noted that by application Exh. 132, it was stated that the place, where accused No.1 is residing, i.e. village Perne, Tq. Haveli, District Pune, has been declared as Containment Zone and, therefore, it was not possible for the accused to come to the Court and exemption was prayed. That is also rejected on the ground that application Exh. 131 has been rejected.

Further, on the same day, it appears that warrant has been issued against accused No.1. When the SOP issued by this Court, directing the subordinate Courts not to pass any adverse order, then order of issuance of the warrant is definitely in derogation to the directions given by this Court and, therefore, that order is also unsustainable.

10. It is to be noted that the entire world, at present, is going through hard times and the entire community is fighting against the Coronavirus (COVID-19). The lockdown, which is still partially going on, so also the Un-locking has affected people at large. Under such circumstance, the Courts should adopt a lenient view when it comes to proceedings before it. When people are struggling for their livelihood, then they cannot afford the luxury of litigation. We should not add misery to their problems and difficulties and, therefore, the Judges, especially in Higher Judiciary, are expected to be sensitive enough.

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11. The impugned orders are unsustainable and, therefore, this Court is bound to invoke its Constitutional powers under Article 227 of the Constitution of India to protect rights of the accsued and citizens of India. The Writ Petition deserves to be allowed. Hence, following order, -

ORDER

i. The Writ Petition is hereby allowed;

ii. The Orders passed below Exh. 128, dated 7.9.2020; Exhibit-131, dated 14.9.2020 and Exhibit-132, dated 14.9.2020 by learned Extra Joint Additional Selssions Judge, Latur in Special (POCSO) Case No.09/2016, are hereby set aside. They all stand allowed.

iii. The learned Special Judge is directed to observe the Standard Operating Procedure (SOP) and re-call the witness when the situation is normal and safe.

(SMT. VIBHA KANKANWADI, J.)