

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 52 OF 2020

KRISHNA BELGAONKAR, PRESENTLY IN
JUDICIAL CUSTODY, THR. LATA ANKUSH
BELGAONKAR.,

... Petitioner

Versus

STATE OF GOA, THR. POLICE
INSPECTOR, CALANGUTE POLICE
STATION, CALANGUTE AND ANR.,

... Respondents

Shri Galileo Francisco Teles, Advocate for the Petitioner.

Shri Pravin Faldessai, Addl. Public Prosecutor on behalf of the
State.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 10th July, 2020

P.C.:

Heard Shri Galileo Teles, learned Advocate for the petitioner
and Shri Pravin Faldessai, learned Addl. Public Prosecutor on
behalf of the State.

2. It was the contention of Shri G. Teles, learned Advocate that
a statement was elicited from the witness about the argument
taking place and that the witness had answered that the police
had asked him what was the arguments about and he had told the
police about the arguments though later in his complaint he
claimed that he did not know whether it was recorded by the
police in his complaint which was read over to him. This aspect

was sought to be confronted to the witness as a material omission and amounting to contradiction and which was not permitted by the learned Addl. Sessions Judge, Panaji. This according to him ought to have been allowed and the reasons assigned by the learned Addl. Sessions Judge that it was elicited in the course of the cross examination and further that the witness could not have visualized as to what was the line of cross examination and given the complaint to the police. This according to me was not a justifiable reason to disallow his request for confronting the witness. The order relied upon by the learned Addl. Sessions Judge of the learned Single Judge of this Court in Vijayraj R. Desai Vs. State,[Stamp Number Main No.3142 of 2016] was not at all applicable to the facts of the case and therefore the petition had to be allowed and the impugned order had to be quashed and set aside. He relied on Deepak Kumar Chaudhary Vs State,[2019 SCC OnLine Del 11321]in support of his case.

3. Shri Pravin Faldessai, learned Addl. Public Prosecutor on behalf of the State invited attention to the very same statement of the witness as referred to by Shri G. Teles, learned Advocate for the applicant and submitted that there was no error committed by the learned Addl. Sessions Judge in recording its finding and disallowing the right of confronting the witness with the omission as stated in his complaint. The learned Addl. Sessions Judge had rightly relied upon the judgment in Vijayraj

Dessai(supra) passed by a learned Single Judge of this Court and therefore, no case whatsoever was made out for quashing and setting aside the order and allowing the petition filed by the petitioner.

4. i have heard Shri G. Teles, learned Advocate for the petitioner and Shri Pravin Faldessai, learned Addl. Public Prosecutor on behalf of the State and besides perused the judgment of the learned Single Judge of this Court in Vijayraj R.Dessai (supra) and that of the Delhi High Court in Deepak Chaudhary (supra). Besides i have also looked through the tenor of the statement to which attention was invited by Shri G. Teles at page 20 of the paper book and from which it is apparent that it was the tenor of the reply of the complainant which precipitated a request at his instance to confront the witness with the complaint since there was no reference to the reasons for the arguments in the complaint lodged before the police. In my assessment and on a consideration of the judgment in Vijayraj R. Dessai (supra) which is clearly distinguishable in the facts of the case and considering the judgment in Deepak Chaudhary (supra) the learned Addl. Sessions Judge was clearly in error to disallow the confrontation to the petitioner when he had clearly made out a case to show from the records that there was an omission in the complaint which tantamounted to a material contradiction.

5. The learned Addl. Sessions Judge ought to have allowed a reasonable opportunity to the petitioner to confront the witness with his statement in the complaint and contradict him accordingly and having failed to do so, the learned Addl. Sessions Judge had committed a gross error in passing the impugned order thereby denying a valuable opportunity to the petitioner to contradict the witness on his complaint whereby a vital opportunity was lost to the petitioner on account of the error committed by the learned Addl. Sessions Judge in confronting the omission which cannot be allowed to stand.

6. In the result therefore, the petition is allowed whereby the impugned order is quashed and set aside. The learned Addl. Sessions Judge is directed to confront the complainant in respect of his previous statement/complaint. Parties to appear before the learned Addl. Sessions Judge on the pre scheduled date and cooperate with the hearing of the trial. The order is passed in the peculiar facts and circumstances of the case.

7. On these terms the petition stands disposed off.

NUTAN D. SARDESSAI, J.

MF/-