

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4067 OF 2018

Manoj Ramchandra Mungekar ... **Petitioner**
Versus
The State of Maharashtra ... **Respondent**

.....

Mr.Ganesh Bhujbal, Advocate for the Petitioner.

Mr.S.V.Gavand, the Additional Public Prosecutor for the
Respondent No.1/State.

....

CORAM : A.M.BADAR J.

DATED : 4th MARCH 2020.

P.C. :

1 Heard the learned Counsel appearing for the
petitioner/original accused. He argued that during the course of
recording evidence of PW.No.1, who happens to be the First
Informant, the learned trial Court had asked several questions to
fill in the lacuna in the prosecution case. Therefore, according to
the learned Counsel for the petitioner/original accused, evidence
of PW.No.1 so far as it relates to the Court questions should be
expunged.

2 I have considered the submissions so advanced and also perused the evidence of P.W.No.1/ First Informant. During the course of recording her cross-examination, the learned trial Court had asked three questions to the P.W.No.1. Those questions were in respect of name of police, who refused to register the FIR, identify of Gawade Madama and whether husband of the First Informant could fetch water subsequent to the incident.

3 In the matter of *Rajendraprasad Versus Narcotic Cell*¹, the Honourable Apex Court has explained what amounts to lacuna in the prosecution case.

4 The Court questions so asked are permissible as per the provisions of Section 165 of the Indian Evidence Act. The learned Counsel for the accused was free to cross-examine the witness after putting those questions by the Court to the said witness. In fact the witness was cross-examined subsequent to asking of those questions. In this view of the matter, as the learned trial Court was justified for putting Court questions under the provisions of

1 (1996) 6 Supreme Court Cases 110.

Section 165 of the Indian Evidence Act, no infirmity can be found in the course adopted by the learned trial Magistrate.

5 The petition, as such, is devoid of merit and the same is, therefore, dismissed.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed
by Raju D.
Gaikwad
Date: 2020.03.04
17:42:22 +0530