

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6285 OF 2019

SONAL SANJAY VEERA

)...PETITIONER

V/s.

MANISH T. SHAH (H.U.F.) AND ANOTHER)...RESPONDENTS

Mr.Viral Rathod i/b. Mr.Tushar Dube, Advocate for the Petitioner.

Mr.Jatin Shah, Advocate for Respondent No.1.

Mr.R.M.Pethe, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 28th FEBRUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 By this petition, the petitioner/original accused is impugning the order dated 4th December 2019 passed below

Exhibit 28 in Criminal Case No.247/SS/2019 by Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai, thereby closing evidence of CW2 M Dineshkumar by recording “No Cross” order, as the learned counsel for the accused was not in a position to cross-examine the said witness.

3 Heard the learned counsel appearing for the petitioner. He submits that as the documents were handed over to him on 4th December 2019 itself and as those documents were regarding record of bank where CW2 M Dineshkumar was serving, he wanted to seek instructions from his client and therefore he was not in a position to cross-examine the witness. Therefore, in submission of the learned counsel for the petitioner/original accused, the learned trial court ought to have granted one opportunity to the accused to cross-examine CW2 M Dineshkumar.

4 As against this, the learned counsel appearing for the contesting respondent/original complainant has submitted that exemption of the accused was sought on that date by the learned

counsel for the petitioner/original accused and therefore, he ought to have cross-examined the witness on the very same day.

5 I have considered the submissions so advanced and perused the impugned order passed while recording deposition of CW2 M Dineshmukar. The learned trial court recorded that no justifiable reason is given to defer cross-examination of CW2 M Dineshkumar and therefore, it proceeded to pass “No Cross” order.

6 In this way, literally, no opportunity to cross-examine CW2 M Dineshkumar was accorded to the accused. The learned trial court has totally lost sight of provisions of Sections 303 and 304 of the Criminal Procedure Code and proceeded to pass “No Cross” order thereby depriving the opportunity to defend himself. The approach of the learned trial court is not in consonance with law, and more particularly, in view of provisions of Sections 303 and 304 of the Criminal Procedure Code which provides that an accused is entitled for legal aid in absence of his counsel, it

becomes the duty of the court to provide legal aid to the accused in such eventuality. Mandate of Article 21 of the Constitution is ignored by the learned trial court while adopting such course of action. (See (a) **Baliram Madhukar Dalvi vs. State of Maharashtra**¹, (b) **Hussainara Khatoon and Others (IV) vs. Home Secretary, State of Bihar, Patna**², (c) **Suk Das and another vs. Union Territory of Arunachal Pradesh**³, (d) **Khatri and Others (II) vs. State of Bihar and Others**⁴, (e) **Madhav Hayawadanrao Hoskot vs. State of Maharashtra**⁵ and (f) **Sagri vs. State of Madhya Pradesh**⁶). In this view of the matter, the petition deserves to be allowed. Hence the following order :

ORDER

- i) Rule is made absolute in terms of Prayer Clause (a).
- ii) Needless to mention that the petitioner shall bear Bhatta charges of CW2 M Dineshkumar.

(A. M. BADAR, J.)

1 2008 ALL MR (Cri) 2042
 2 (1980) 1 Supreme Court Cases 98
 3 AIR 1986 Supreme Court 991
 4 (1981) 1 Supreme Court Cases 627
 5 (1978) 3 Supreme Court Cases 544
 6 (1991) 1 Crimes (HC) 580