

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.262 OF 2020

PRAKASH S/O. SHIVMURTI SAKHARSHETE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA

..RESPONDENT

...

Advocate for Petitioner : Mr. Parikshit P. Dawalkar

APP for Respondent-State : Mr. R. B. Bagul

...

CORAM : N. R. BORKAR, J.

DATE : 26.10.2021

PER COURT :-

This Writ Petition takes an exception to the order dated 08-01-2020, passed by the learned Judicial Magistrate, First Class, Nanded, below application Exhibit-143 in Regular Criminal Case No. 823 of 2012.

2. The petitioner, who is an accused No.7 in the above said regular criminal case, is facing trial for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code. By the application at Exhibit-143, the prosecution has sought permission to examine the witnesses, who were not cited as witnesses in the charge sheet. The learned trial Court allowed the said application at Exh. 143 by the order impugned.

3. I have heard the learned counsel for the petitioner and learned A.P.P for the respondent-state.

4. The learned counsel for the petitioner submits that the intent of the prosecution behind moving an application at Exh. 143, is to fill up the lacunnae in its case. It is submitted that same is not permissible. It is further submitted that the prosecution apart from the other witnesses mentioned in Exh. 143, has sought permission to examine one Advocate Jagdish V. Kondi as witness, to prove the affidavit dated 16.06.2010, purportedly sworn by the petitioner. It is submitted that there is no reference of the said affidavit in the complaint, lodged by the complainant on 01-09-2012 nor the said affidavit was produced during the investigation. It is submitted that the said affidavit came to be produced on record only after the prosecution has closed its evidence. It is submitted that if the order of trial Court is allowed to stand and prosecution is permitted to examine the witnesses mentioned in Exh. 143, then serious prejudice will be caused to the defense of the accused. It is submitted that the order impugned thus needs to be set-aside.

5. On the other hand, learned APP for the respondent-State submits that all the witnesses mentioned in the

application at Exhibit-143 are material witnesses. Their evidence is necessary for just decision of the case. It is submitted that no interference is thus called for in the order impugned.

6. Except Advocate Jagdish V. Kondi all other witnesses are Bank Officials and permission is sought to examine them to prove the bank statements, which are already there on record.

7. However, as regards permission sought by the prosecution to examine Advocate Jagdish V. Kondi to prove the affidavit dated 16.06.2010 it appears that said affidavit came to be filed at the fag end of the trial. Apart from it, there is no reference of the said affidavit in the complaint nor it was produced during the investigation. Thus, the order impugned to that extent of permitting the prosecution to examine Advocate Jagdish V. Kondi, as witness is quashed and set-aside. Rest of the order is maintained.

8. Criminal Writ Petition is disposed of in aforesaid terms.

(N. R. BORKAR)
JUDGE