

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

**8 CRIMINAL WRIT PETITION NO.1220 OF 2021
WITH
APPLN/2647/2021 IN WP/1220/2021**

**SAHEBRAO SHANKAR BHALKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Petitioners : Mr. A.P. Lohade h/f Mr.Ladda Somnath G.
APP for Respondent-State : Mrs.R.P.Gaur
...

CORAM : N.R. BORKAR , J.

DATE : 29th NOVEMBER, 2021.

P. C. :

1. The petitioners are accused in Sessions Case No. 153 of 2015 and are facing trial for the offences punishable under Sections. 302, 143, 147, 148, 149 of the Indian Penal Code (for short "I.P.C.") and under Section 135 of the Maharashtra Police Act.

2. During the cross-examination of PW 19 Mr. Laxminarayan Abarao Shingare, the Investigating Officer certain questions were put to him. Paragraph No. 26 of the cross-examination which is relevant for the purpose of deciding the controversy in the present matter reads thus :

"On 14.03.2015, I had gone to the spot of incident. I could not meet P.W.1 Mangalchand or Shivpal, when I had gone to the spot on 14.03.2015 during day or night time, I had gone there with a view to investigate. I returned back without going to the actual spot of the incident or meeting anybody. I was

accompanied with my colleagues. I was knowing that the investigating officer has to visit the spot of incident immediately on registering F.I.R. I do not remember whether entries were taken in station diary relating to this matter regarding registration of F.I.R. It is true to say that I have replied that, "I do not remember," after verifying the case diary which is with me."

3. As the Investigating Officer has stated that he does not remember whether entries were taken in a station diary relating to registration of F.I.R. in this matter even after verifying the case diary, the accused sought permission to see the case diary. The learned trial Court after hearing the parties has passed the following order :

"Therefore, the permission as aforesaid limited to the question put to the Investigating Officer about the entry regarding registration of the F.I.R. is given and the learned defence Advocate can see the case diary of the related date 14.2.2015 and only to that extent put related question if he desires so in cross-examination of PW 19 the Investigating officer."

4. The learned counsel for the petitioner submits that from the para No. 26 of the cross-examination it would appear that the questions were put to witness to know if he had visited the alleged spot of incident on the date F.I.R. was lodged. It is submitted that initially witness had stated that he had gone to the spot of incident, and then he took somersault and had stated that he returned back without going to the actual spot of incident. It is submitted that the witness then admitted that the Investigating Officer has to visit the

spot of incident immediately on registering F.I.R. It is submitted that, then the witness was asked, if he had taken any entry in the case diary. It is submitted then the witness thought it fit to refer to case diary and stated that he does not remember if any entry was taken in the station diary. It is submitted that the trial Court therefore, ought to have permitted accused to see and use the case diary to cross-examine PW 19 to that extent.

5. The learned counsel for the petitioner, in support of his submissions has relied upon various judgments of Hon'ble the Supreme Court and the High Courts.

6. On the other hand, the learned A.P.P. for respondent-State submits that the right of the accused to see and use the case diary for cross-examining the police officer under Section 172 of the Cr.P.C. is very much limited to the extent only when the Court uses such entries to contradict the Police Officer and when such Police Officer see it for refreshing his memory. It is submitted that in the present matter P.W. 19 has referred to the case diary only in relation to one question i.e. whether the entries were taken in the station diary relating to registration of F.I.R. It is submitted that the learned trial Court was therefore justified in allowing the accused to see and use the case diary for cross-examination to that extent only. It is submitted that no interference is thus called for in the order

impugned. It is submitted that the petition be dismissed.

7. The Hon'ble Supreme Court in the case of **Balakram Vs. State of Uttarakhand and Others**, reported in 2017 (7) Supreme Court Cases 668 has held :

“10. Coming to the use of police diary by the accused, sub-section (3) of Section 172 clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the Court. But, in case the police officer uses the entries in the diaries to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, then the provisions of Section 145 and 161, as the case may be, of the Evidence Act would apply. Section 145 of the Evidence Act provides for cross examination of a witness as to the previous statements made by him in writing or reduced into writing and if it was intended to contradict him in writing, his attention must be called to those portions which are to be used for the purpose of contradiction. Section 161 deals with the adverse party's right as to the writing used to refresh memory. It can, therefore, be seen that, the right of the accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory.

11. In other words, in case if the Court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of accused getting any right to use entries even to that limited extent does not arise. The accused persons cannot force the police officer to refresh his memory during his examination in the Court by referring to the entries in the police diary.

12. Section 145 of the Indian Evidence Act consists of two limbs. It is provided in the first limb of Section 145 that a witness may be cross-examined as to the previous statements made by him without such writing being shown to him. But the Second limb provides that, if it is intended to contradict him by the writing, his attention must before writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. Section 155 (3) and 145 of Indian Evidence Act deal with the different aspects of the same matter and should, therefore, be read together.

13. Be that as it may, as mentioned supra, right of the accused to cross examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses such entries to contradict the police officer or when the police officer uses it for refreshing his memory and that again is subject to provisions of Section 145 and 161 of the Indian Evidence Act. Thus, a witness may be cross-examined as to his previous statements made by him as contemplated under Section 145 of the Evidence Act if such previous statements are brought on record, in accordance with law, before the Court and if the contingencies as contemplated under Section 172(3) of Cr.P.C. are fulfilled. Section 145 of the Indian Evidence Act does not either extend or control the provisions of Section 172 of Cr.P.C. We may hasten to add here itself that there is no scope in Section 172 of the Cr.P.C. to enable the Court, the prosecution or the accused to use the police diary for the purpose of contradicting any witness other than the police officer, who made it.”

8. The Hon'ble Supreme Court has in no uncertain terms held that the right of accused to cross-examine the police officer with reference to entries in the case diary is very much limited and even

that limited scope arises only when Court uses such entries to contradict the police officer or when the police officer uses it for refreshing his memory.

9. In the present case P.W. 19 had not used the case diary for answering the questions which were put to him in paragraph No. 26 of his cross-examination in relation to his visit to the spot of incident except the question, whether entries were taken in station diary regarding registration of F.I.R. This question for which P.W. 19 has used the case diary appears to be *dehors* of other question put to P.W. 19 in paragraph No. 26 in relation to his visit to spot of incident. The trial Court was thus justified in refusing the permission as sought by the accused for entire paragraph No. 26. Therefore, no interference is called for in the impugned order.

10. The petition is dismissed.

11. In view of dismissal of the writ petition, the intervention application No. 2647 of 2021, filed by the complainant does not survive and the same is disposed of.

(N.R. BORKAR)
JUDGE