

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 CRIMINAL WRIT PETITION NO.1250 OF 2021

SAMADHAN SHIVAJI GATE
VERSUS
THE STATE OF MAHARASHTRA

Mr.V.B. Deshmukh, Advocate for the petitioner.
Mr.R.B. Bagul, APP for the respondent/State.

CORAM : N.R.BORKAR, J.
DATED : 25.11.2021

PC :-

01. This petition challenges the order dated 29.09.2021 passed by the learned Sessions Court, Osmanabad in, Sessions Case No.123 of 2019, below Exh.36.

02. The petitioner is an accused in the aforesaid Sessions Case and is facing Trial for the offence punishable under section 353 of the Indian Penal Code. The said offence punishable under section 353 of the IPC before amendment to Cr.P.C. by (Maharashtra Amendment) Act, 2017 was triable by the Magistrate's Court. As the

charge-sheet in the present matter was filed before amendment, the learned Magistrate conducted the trial and recorded the evidence of few witnesses. However, thereafter, in view of the amendment making the offence punishable under section 353 triable by Sessions Court, the learned Magistrate committed the present matter to the Sessions Court.

03. An application thereafter came to be moved on behalf of present petitioner/accused to recall the prosecution witnesses for further cross-examination. The learned Sessions Court rejected the said application by the order impugned.

04. I have heard learned Counsel for the petitioner and learned APP for the respondent/State.

05. Learned Counsel for the petitioner submits that Considering the facts and circumstances the learned Sessions Court ought to have recalled the witnesses for

further cross-examination. In support of the submissions learned Counsel for the petitioner has relied upon a judgment in the case of Shri Kishor s/o. Anandrao Gaidhane Vs. The State of Maharashtra, 2018 ALL MR (Cri) 3470.

06. On the other hand, learned APP for the respondent/State submits that no reason is assigned in the application moved by the petitioner at Exh.36. It is submitted that the Trial Court was thus justified in rejecting the application.

07. The learned Counsel for the petitioner submits that he be permitted to file fresh application mentioning the reasons as to why the witnesses need to be recalled for further cross-examination. Considering the facts and circumstances, the petitioner is permitted to file fresh application.

08. In the result, following order is passed :-

O R D E R

i. The petitioner is permitted to file fresh application.

ii. If such application is filed, the learned Trial Court shall decide it on its own merit without being influenced by the orders passed earlier.

iii. The petition is disposed of in above terms.

[N . R . BORKAR , J .]