

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1097 OF 2020

Sunil Shankar Patil	}	
Age 57 years, Occ : Business,	}	
R/o Building No. 18, Flat No.14,	}	
Ravikiran Aundh Baner Road,	}	
Aundh, Pune.	}	... Petitioner

Vs.

1.	The State of Maharashtra	}	
	Through Senior Police Inspector	}	
	Bhuinj Police Station, Dist. Satara,	}	
2.	Suhel Shaukat Shaikh,	}	
	Age : Adult, Residing at Rahat Bangala,	}	
	Shivaji CHS, Near Stadium, Karad,	}	
	Dist. : Satara.	}	... Respondents.

Mr. Mahindra Deshmukh for the Petitioner.
 Mr. Amit Palkar, A.P.P. for Respondent No.1-State.
 Mr. Rahul Kate for the Respondent No.2.

CORAM : A.S. GADKARI, J.
DATE : 14TH JANUARY 2021.

PC. :

. By the present Petition under Article 227 of the Constitution of India, the petitioner-injured victim in S.C.C. No.153 of 2011 has questioned correctness of common Order dated 14th February 2020, passed below

Exhibits-114 and 116, by the learned Judicial Magistrate, First Class, Wai, District Satara.

2. Heard Mr. Deshmukh, learned counsel for the petitioner, Mr. Palkar, learned A.P.P. for respondent No.1-State and Mr. Kate for the respondent No.2. Perused entire record annexed to the petition.

3. The respondent No.2 is facing charge for the offence punishable under Sections 304(A), 279, 337, 338 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act, 1988.

It is the prosecution case that, on the date and time of incident, the respondent No.2 in a rash and negligent manner, intentionally gave a dash of his vehicle to the vehicle of petitioner, in which the wife of petitioner expired and the petitioner and his son got seriously injured. The trial of the said S.C.C. No. 153 of 2011 is in progress and as of today, evidence of 8 witnesses has been recorded. The recording of evidence of PW-4 was completed on 8th August 2019.

The petitioner under his signatures thereafter moved applications below Exhs.114 and 116, on 10th January 2020 and 27th January 2020 respectively. The said applications have been counter signed by the concerned Public Prosecutor appearing before the Trial Court. The Trial Court by its impugned Order has rejected both the said applications on the ground that,

the same were filed belatedly and after a gap of about five months. The Trial Court has also observed that, no plausible explanation is offered by the petitioner for filing such applications belatedly. The Trial Court is therefore, of the view that, the discretion as enunciated under Section 311 of Cr.PC. can not be weighed in favour of the petitioner herein by exercising powers under Section 154 of the Indian Evidence Act.

4. Mr. Deshmukh, learned counsel for the petitioner submitted that, the petitioner is a victim in the present case and it is his endeavor to bring all the correct and necessary facts before the Court. He submitted that, there are contradictions with respect to the spot panchanama, in the evidence given by Shri Bhanudas Ingawale (PW-4), Investigating Officer of the present Crime. He submitted that, in the cross examination, he has given certain admissions which may not be beneficial to the petitioner and therefore, it is necessary to declare him hostile, with liberty to the petitioner to further cross-examine him. He therefore prayed that, the impugned Order may be set aside.

5. Mr. Kate, learned counsel appearing for the respondent No.2 submitted that, the petitioner is being represented by an Advocate before the Trial Court, who is assisting the public prosecutor therein. He, on instructions, submitted that, the petitioner is either pressurizing or coercing the prosecuting agency to give evidence in a particular manner with the only

aim, to secure conviction of the respondent No.2. He submitted that, the trial of the said case is at the fag-end. He therefore prayed that, the petition may be dismissed.

Mr. Palkar, learned A.P.P for the respondent-State submitted that, appropriate Orders in the interest of justice may be passed.

6. Minute perusal of record, including the testimony of PW-4 Bhanudas Ingawale, prima facie indicates that, in his examination-in-chief, he has narrated the facts as come on record during the course of investigation and has not resiled from the prosecution case. The public prosecutor appearing therein, therefore, did not thought it fit to declare him hostile. In his cross-examination, certain admissions have been extracted by the defence counsel by his skill of advocacy and as per the submissions of learned counsel for the petitioner, contradictory to the spot panchanama. On this aspect, I am not in agreement with Mr. Deshmukh, learned counsel for the petitioner.

The testimony of PW-4 further clearly indicates that, the prosecution was granted opportunity to re-examine the said witness, which was declined by it. The Trial Court has in unequivocal terms at the end of the testimony of PW-4 has recorded in marathi 'फेरतपास नाही', meaning thereof '*No re-examination*'. It clearly appears to me that, the trial Court has complied with the basic principles of natural justice, so also the provisions of Indian

Evidence Act, while conducting the trial. It further appears that, as and by way of an after thought applications, below Exhs. 114 and 116 were filed by the petitioner, just to fill up the alleged *lacunas*, which are allegedly detrimental to his interest in the trial.

7. It is to be noted here that, if the submissions of the learned counsel for the petitioner are accepted, that there are certain vital admissions given by the said witness in favour of the respondent No.2, the same can not be wiped out at such a belated stage of the trial and particularly, in view of the fact that, the petitioner was granted ample opportunity by the trial Court to re-examine the said witness.

8. Perusal of impugned Order further indicates that, the Trial Court has not committed any error either in law or on facts.

In view of the above, Petition is dismissed.

(A.S. GADKARI, J.)