

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 834 OF 2021

Ganesh Vaman Bhandary

... Petitioner

V/s.

CBI-ACB & Ors.

... Respondents

Mr.Girish Kulkarni i/b. Mr.Prashant Badole for Petitioner.

Mr.H.S. Venegavkar for Respondent No.1-CBI.

Mr.Amit Palkar, A.P.P. for Respondent No.2-State.

CORAM : A.S. GADKARI, J.

DATE : 8th March 2021.

P.C. :

1. The petitioner has impugned Order dated 14th January 2021 passed below Exh.470 in Special Case No. 40 of 2007, thereby discharging PW-19 Mr.Abanikanta Mishra, after recording his evidence by the prosecution.

2. Heard Mr.Kulkarni, learned counsel for the petitioner, Mr.Venegavkar, learned counsel for the respondent No.1-CBI and Mr.Palkar, learned A.P.P. for respondent No.2-State. Perused record.

3. The record indicates that, the evidence of witness, namely, Mr.Abanikanta Mishra (PW-19) was scheduled on 14th January 2021 by the Trial Court. The learned Advocate for the petitioner (accused No.1) was undergoing treatment for osteoporosis and therefore was unable to remain present before the Court. She therefore filed application below Exh.469 for

adjournment. The Trial Court rejected the said application and directed the prosecution to make available the said witness for cross-examination so far as the learned Advocate for the petitioner is concerned, through Video Conferencing (V.C.) mode. The record further indicates that, after the cross-examination of PW-19 was started by the learned Advocate for the petitioner through V.C., she informed the learned Judge of the Trial Court that, she is not comfortable to conduct cross-examination of the said witness through V.C. mode and insisted for physical cross-examination.

4. The Trial Court while recording evidence of the said witness has observed that, the said witness is a senior citizen and he had expressed apprehension to again physically appear in Trial Court during the prevailing pandemic effect. The Trial Court in unnumbered para Nos.3 and 4 of the cross-examination by the learned Advocate for the petitioner has observed as under :-

“In the first session, the advocate appearing on behalf of accused No.1 has been informed about the adjournment granted for today and the cross-examination of this witness to be conducted through VC mode. Knowing this, again the Ld. Adv. for accused No.1 informed the Court regarding her inconvenience by way of proceeding through VC mode, which is quite strange inasmuch as in the pandemic situation, Hon’ble Higher Courts are insisting for recording evidence through VC mode.

In view of the same, it appears that Ld.Adv. for accused No.1 who was granted opportunity to cross-examine the witness through VC mode is not willing to avail the same for the reasons best known to her. Her convenience to physically cross-examine the witness cannot be given priority over the peculiar pandemic situation & circumstances, in which the cross-examination is directed through VC mode. Hence, right of cross-examination of accused No.1 stands forfeited and the witness is discharged.”

5. It is the settled principle of criminal jurisprudence that, the right of cross-examination of a witness by an accused is a valuable right and it cannot be easily wiped out or forfeited on some unreasonable grounds.

According to Mr.Kulkarni, learned counsel for the petitioner, the said PW-19 is an important witness and cross-examination on behalf of the petitioner (accused No.1) is imperative to extract truth from him, which may perhaps be beneficial to the petitioner at the time of final hearing of the said case.

6. Mr.Kulkarni, learned counsel on instructions further submitted that, if the said witness is recalled for cross-examination by the petitioner on a particular date, the petitioner undertakes to this Court that, he will not seek adjournment on that day on any ground and his cross-examination will be completed on that particular day itself. The said statement is accepted.

Mr.Kulkarni, further submitted that, his client will bear all the necessary expenses of the concerned witness for his to and fro journey from Bhubaneshwar to Mumbai along with taxi fare, i.e. Ticket Fare for Economy Class Air Travel, Taxi Fare from Mumbai Airport to Court and Court to Mumbai Airport. The said statement is also accepted.

7. In view thereof, the right of cross-examination of PW-19 forfeited by the Trial Court by its Order dated 14th January 2021 is set-aside and the petitioner is permitted to cross-examine the said witness i.e. PW No.19.

8. The Trial Court is directed to issue a fresh summons to the said witness, namely, Mr.Abanikanta Mishra (PW-19) by giving a specific date. The petitioner is directed to pay his charges as mentioned above on his production of air tickets in the Court directly to the said witness on the same day in the Court itself. Petitioner is also directed to make payment of to and fro taxi charges from Mumbai Airport to Court and Court to Mumbai Airport directly to the said witness on the same day in the Court itself.

9. In view of the above, impugned Order dated 14th January 2021 passed below Exh.470 is set-aside. The observations of the learned Judge of the Trial Court on page No.4 of evidence of PW-19 in unnumbered para Nos.3 and 4 reproduced herein above are also set-aside.

10. Petition is allowed in the aforesaid terms.