

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

CRIMINAL WRIT PETITION NO.1998 OF 2018

The State of Maharashtra

...Petitioner

Versus

Mahammad Rizawan Salim Shaikh

...Respondent

Ms. P. P. Shinde, A.P.P for the Petitioner-State

Mr. Harshad Bhadbhade i/b Mr. S. P. Pimpale for the Respondent

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 4th AUGUST 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner-State has impugned the order dated 9th January 2018 passed by the learned Sessions Judge, Ratnagiri, below Exhibit 45 in Sessions Case No. 26/2016.

3 Perused the papers with the assistance of the learned A.P.P and learned counsel for the respondent. The respondent is being prosecuted for the offence punishable under Section 302 of the Indian Penal Code and

under Section 3 r/w Section 25 of the Arms Act. After investigation, charge-sheet was filed against the respondent.

4 During the course of trial, the prosecution commenced with the examination of its witnesses. It appears that when PW 5 Asif Habib Akbani stepped into the witness box, his examination-in-chief was recorded by the prosecution. The said witness supported the prosecution case in the examination-in-chief. It appears that during the cross-examination of the said witness i.e. PW 5-Asif Akbani, the said witness gave certain admissions, pursuant to which, the prosecution filed an application and sought to declare the said witness hostile on the basis of the answers given by him in the cross-examination. The said application was rejected by the learned Sessions Judge, Ratnagiri, vide order dated 9th January 2018. The trial Court, in para 3 of the impugned order, has observed as under :

*“(3). Perused the contents of the application filed by the prosecution and say of the defence at **Exh.46**. The Examination-in-Chief and cross-examination of the witness Asif Habib Akbani (PW 5) came to be recorded before me. I had an occasion to read the demeanour of the witness during the entire cross-examination. The witness answered the question put during cross-examination in its rational flow. The information brought on record during cross-examination appears to be an*

additional information. It cannot be termed as an information suppressing the truth of the prosecution story. In such circumstances, there is no scope to allow the prosecution to cross examine this witness. For these reasons following order is passed.

ORDER

The application is rejected.”

5 The object of cross-examination is to elicit truth. Merely because a witness has given certain admissions cannot be a ground for the prosecution to file an application to declare the said witness hostile. It is always open for the prosecutor to re-examine the said witness, if so permissible, in accordance with law.

6 Perused the evidence of PW 5-Asif Akbani and the impugned order dated 9th January 2018. No infirmity can be found in the impugned order.

7 The petition is accordingly dismissed. Interim relief stands vacated.

8 Since the case is of the year 2016, the trial of the respondent is expedited.

9 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.