

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

CRIMINAL WRIT PETITION NO. 6317 OF 2019

Subash Vinayak Chowdhari

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr.Manish Bohra a/w. Mr.Rushi Bhuta i/b. A.S. Khan & Associates for
Petitioner.

Mr.S.S. Hulke, A.P.P for Respondent No.1-State.

Mr.Yogendra M. Kanchan for Respondent No.2.

CORAM : A.S. GADKARI, J.

DATE : 11th February 2021.

PC. :

By the present Petition under Article 227 of the Constitution of India, the petitioner/original accused has impugned Order passed below Exhibit-66, dated 4th December 2019, by the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, in C.C. No.4200/SS/2015, rejecting the said application preferred by the petitioner for recalling the complainant for cross-examination.

2. Heard Mr.Bohra, learned counsel for the petitioner, Mr.Hulke, learned A.P.P. for the respondent No.1-State and Mr.Kanchan, learned counsel for the respondent No.2.

3. Mr.Bohra learned counsel for the petitioner submitted that, the petitioner/original accused never sought adjournment before the Trial Court

in last more than five years and it was only on 9th May 2019, the Advocate-on-Record for the petitioner could not remain present, as he was travelling abroad for medical treatment an adjournment was sought. He submitted that, the application for adjournment (Exh.65) was rejected by the Trial Court and the Trial Court also passed an Order of no cross of complainant (respondent No.2) against the petitioner below Exh.13 on 9th May 2019. He submitted that, the petitioner therefore filed an application below Exhibit-66 for recalling of the said witness, i.e. complainant, for cross-examination, which has been rejected by the Trial Court. He submitted that, it is settled by a catena of decisions of the Hon'ble Supreme Court that, the Court has ample powers to recall witness for its examination and/or cross-examination under Section 311 of Cr.P.C. and therefore, by exercising such powers, this Court may set-aside the impugned Order and permit the petitioner to cross-examine the respondent No.2.

4. Per contra, learned counsel for the respondent No.2 opposed the Petition and supported the impugned Order. He submitted that, the petitioner is successful in dragging the present litigation for more than five years and therefore, the Trial Court has rightly passed Order dated 9th May 2019 on the application for adjournment below Exhibit-13. He therefore prayed that, the petition may be dismissed.

5. Perusal of record would indicate that, the respondent No.2 has instituted complaint for an offence punishable under Section 138 read with 141 of the Negotiable Instruments Act, before the learned Magistrate initially in the year 2014. Though there is dispute amongst the learned counsel for the respective parties that, who remained absent on how much occasions, it is a fact on record that, the proceedings under Section 138 of the Negotiable Instruments Act is pending on the file of the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, for more than five years.

The Hon'ble Supreme Court in the case of *Makwana Mangaldas Tulsidas Vs. State of Gujrat and Another*, reported in (2020) 4 SCC 695, while considering a case under Section 138 of the N.I.Act has observed that, the matter which is supposed to be disposed off summarily by the Trial Court in six months took seven years to be disposed off at the Trial Court level and the dispute of such a nature (the case therein) has remained pending for 15 years in various courts, taking judicial time and space upto the Hon'ble Supreme Court.

6. The observations made by the Hon'ble Supreme Court are aptly applicable to the case in hand. The facts of the present case therefore will have to be considered in view of the observations made by the Hon'ble Supreme Court in the case of *Makwana Mangaldas Tulsidas* (supra).

The record further indicates that, the petitioner filed an application for adjournment below Exh.65 on 9th May 2019 on the spacious ground that the Advocate for the petitioner was travelling abroad for medical treatment and therefore, was unable to remain present on that day. It has to be noted here that, no contemporaneous record such as, travelling ticket and/or medical documents were annexed to the said application. The said documents are also not conspicuously annexed even to this Petition. The Trial Court therefore passed Order dated 9th may 2019, rejecting the said application by observing that, the matter is more than 5 years old and the Advocate for the complainant was present. The record further indicates that, the Trial Court thereafter directed the concerned Advocate who was present in the Court and was holding brief for his senior to proceed with the case and to cross-examine the concerned witness. It appears that, the concerned Advocate did not accede to the request of the learned Magistrate of cross-examining the complainant and therefore, the Trial Court was constrained to pass Order dated 9th May 2019 below Exhibit-13 of no cross-examination of the complainant by the petitioner.

7. In this background the petitioner preferred an application below Exh.66 for recalling of complainant for his cross-examination. While rejecting the said application (Exh.-66) by the impugned Order dated 4th December 2019, the Trial Court has observed that, there is provision in Criminal Manual

seeking long leave sanctioned from the Principal District Judge and no such leave was taken before travelling abroad. The Trial Court has also observed that, there is a team of six juniors in the chamber of Mr.Kanani, who is the Advocate for the petitioner in Trial Court. It appears that, the said Senior Advocate did not instruct his junior/juniors to conduct cross-examination in his absence. Even otherwise, as noted earlier, the petitioner did not produce on record any document in support of its contention that, his Advocate on record was infact travelling abroad for medical treatment.

8. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice

have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

9. In view of the above and after perusing the impugned Order, this Court is of the considered opinion that, the Trial Court has not committed any error while passing the impugned Order. The Petition is accordingly dismissed.

10. Learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, seized of CC No.4200/SS/2015 is directed to conclude the hearing of the said case within a period of six months from the date of receipt of present Order.

The Trial Court is directed to conduct the said case as far as possible on day-today basis.

11. At this stage, learned counsel for the petitioner sought stay to the present Order. Taking into consideration the facts mentioned hereinabove, the said prayer for stay is rejected.

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn

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