

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.334 OF 2022

ANIL GANJIDHAR PAWAR

VERSUS

VAIBHAV SHARAD SONWANE AND OTHERS

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Mr. Anil Pawar, petitioner present in person

Mr. M.R. Wagh, Advocate for respondent Nos.1 to 3, 6 and 7 - **absent**

Mr. S.P. Sonpawale, APP for the respondent No.8

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 07th JUNE, 2022

PRONOUNCED ON : 10th JUNE, 2022

ORDER :

1 In this writ petition the applicant, who is the original informant is challenging the dismissal of his Criminal Revision Application No.9/2022 by learned Additional Sessions Judge, Dhule on 25.02.2022, wherein order below Exh.3 dated 09.02.2022 in Regular Criminal Case No.278/2020 passed by learned Judicial Magistrate First Class, Dhule (Court No.4) was challenged. The said application filed by the present petitioner under Section

302 of the Code of Criminal Procedure came to be rejected.

2 Before turning to the submissions, it is necessary to consider the facts of the case in nutshell.

Regular Criminal Case No.278/2020 is pending before learned Judicial Magistrate, Dhule (Court No.4) for the offence punishable under Section 143, 147, 148, 354, 336, 447, 324, 504, 506 of the Indian Penal Code, 1860. The present petitioner had filed First Information Report vide Crime No.133/2018 before Deopur Police Station, Dist. Dhule. The most of the witnesses are his family members and the others are panchas and police officers. By filing application at Exh.3 under Section 302 of the Code of Criminal Procedure, the petitioner prayed that he be allowed to conduct the proceedings. It was stated in the said application that he has vast experience to conduct the trial and in some of the cases he has been granted permission to conduct the prosecution. He knows the details about the case and also he has knowledge about the criminal record of the accused.

3 It will not be out of place to mention here that initially the learned Magistrate had rejected the application by order dated 23.11.2021, however, the present petitioner filed Criminal Writ Petition No.1506 of 2021 before this Court. By order dated 25.01.2022 this Court allowed the writ

petition by setting aside the said impugned order and learned Magistrate was directed to decide application Exh.3 on its own merit by giving reasoned order. Thereafter both the parties were heard and a reasoned order has been given, thereby rejecting the application on 09.02.2022. Thereafter the said order was challenged in the above said revision i.e. Criminal Revision Application No.9/2022 by the petitioner before learned Additional Sessions Judge, Dhule and the said revision came to be dismissed on 25.02.2022. Hence, this writ petition.

4 Heard party-in-person i.e. the petitioner himself and learned APP Mr. S.P. Sonpawle for respondent No.8. Learned Advocate Mr. M.R. Wagh appearing for respondent Nos.1 to 3, 6 and 7 was absent.

5 It has been vehemently submitted by the party-in-person i.e. petitioner that both the Courts below have committed illegality/blatant wrong in rejecting the application Exh.3 and the criminal revision application. The decisions, on which both the Courts relied, have been misinterpreted. It has been wrongly held that the petitioner has no legal knowledge or the matter involves complex question of law, which cannot be handled by the petitioner. In fact, the petitioner has a very vast experience. He has conducted matters before the Magistrate, Court of Sessions, this Court

as well as before Hon'ble Supreme Court. Petitioner himself is the informant as well as his family members are the victims of the crime and, therefore, he is in a better position to put forward their grievances. Assistant Public Prosecutors are not conducting the proceedings properly and in fact, he is in a better position to conduct the matter. He has provided the copies of the orders, in which he has been allowed to conduct the proceedings under Section 302 of the Code of Criminal Procedure. It was wrong to interpret by the Trial Court that the evidence in the present case involves complex question under Section 65(A) and 65(B) of the Indian Evidence Act, when electronic evidence has been produced.

5.1 He relied on **Dhariwal Industries Ltd. vs. Kishore Wadhwani and Ors.**, AIR 2016 SC 4369, wherein Hon'ble Supreme Court taking into consideration the decision in **J.K. International vs. State (Government of NCT of Delhi) and others**, (2001) 3 SCC 462 had held that the Court has to form an opinion that cause of justice would be best subserved and it is better to grant such permission and, it would generally grant such permission.

5.2 Further, by pointing out the decision in **Amir Hamza Shaikh and others vs. State of Maharashtra and another**, 2019 Criminal Law Journal 4212, also it was submitted that permission to conduct the prosecution can

be granted to victim or the informant was considered. And, in fact, in **J.K. International** (supra) relied in **Amir Hamza** (supra) also it was held that if the cause of justice would be served better by granting such permission, the Magistrate's Court would generally grant such permission. Though it is further observed that the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate and, therefore, the Magistrate has to consider such applications and in view of **J.K. International** (supra) such permission deserves to be granted.

5.3 He also relied on the decision in **Babasaheb Poul vs. The State of Maharashtra and another, Writ Petition No.3172 of 2021** decided at the Principal Seat on 07.10.2021, wherein after taking into consideration the above said decisions of the Hon'ble Apex Court this Court had quashed and set aside the order of Magistrate, who had imposed cost on the petitioner-informant and then directed the Magistrate to decide the intervention application. The petitioner-in-person therefore prayed for allowing his application Exh.3 for conducting the prosecution before the Magistrate.

6 The learned APP supported the reasons given by the learned Magistrate as well as learned Revisional Court and submitted that it is a State

case that has been filed after the First Information Report lodged by the present petitioner that was investigated. While investigating the case, the petitioner himself has produced pen drive, which is part of the evidence and the panchnama of the seizure of the pen drive has therefore been drawn. Learned Magistrate has considered that the case involves complex question of law points and, therefore, has refused to grant permission to the petitioner to conduct the prosecution without the aid of Assistant Public Prosecutor. However, at the same time, permission has been granted to the informant-petitioner that he can assist the APP and also he can file applications, say and arguments. Therefore, proper participation has been granted to the petitioner and therefore, he should not be aggrieved by the order. That order requires no interference at all.

7 It is to be noted that on the basis of First Information Report lodged by the present petitioner with the police the police had investigated the case and filed charge sheet against the accused persons. As a part of evidence the petitioner has produced pen drive and has also seized other articles. The point that has been considered by the learned Magistrate about the complex question is in respect of an electronic evidence. No doubt, a technical knowledge about electronic evidence is not required to the person who is conducting the case but with the technical knowledge the legal

knowledge is also required to be considered, when it comes to adducing of the evidence in respect of electronic evidence. From the above said pronouncements, especially **J.K. International** (supra) which has been reiterated in **Amir Hamza** (supra) as well as **Dhariwal Industries Ltd.** (supra), it can be seen that the scope of Section 302 of the Code of Criminal Procedure is not *res integra*. It has been held by the Three Judge Bench in **J.K. International** (supra) that under Section 302 of the Code of Criminal Procedure the private person can be permitted to conduct prosecution in Magistrate's Court by seeking a specific permission to that effect. However, after such application is given it is open to the Court to consider such request and if the Court thinks that the cause of justice would be served better by granting such permission the Court would generally grant such permission. However, clarifying it further it was held that the said wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor. In **Amir Hamza** (supra) it has been observed that a Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. Even while granting that fact also it is required to consider by the Magistrate as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities

which cannot be handled by the victim.

8 Here, in this case, the learned Magistrate has come to the conclusion that the case before him involves complexities. It is the satisfaction of the Magistrate that is important and not that of the petitioner. Petitioner may be confident but his confidence is on different footing than on a satisfaction of the Magistrate. The petitioner does not want to refuse any kind of faith or trust in APP for the reasons best known to him but there cannot be a Generalization. His past experience or general experience cannot be of importance and that cannot be a ground to grant him the permission, but then a balance will have to be struck with the fact that no doubt, he has better knowledge about facts of the case and also that he has desire to protect interest of his family members also, but, at the same time, when the matter comes before the Courts of law, the complexities and law points involved are also required to be considered than the interest of a party. Therefore, taking into consideration the order passed by the learned Magistrate the balance has been struck, the rights of the victim have been protected by allowing him to assist APP as well as permit him to file applications, say, written notes of arguments etc. The orders passed by both the Courts below are within the parameters of the ratio laid down in the above said authorities and, therefore, they do not require any kind of

interference, especially under the Constitutional powers of this Court under Article 226 and 227 of the Constitution of India as well as under Section 397 of the Code of Criminal Procedure. Petition, therefore, stands rejected.

(Smt. Vibha Kankanwadi, J.)

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