

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1435 OF 2022

ANIL GANJIDHAR PAWAR

VERSUS

SWATI PRASHANT PATIL AND ANOTHER

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Mr. Anil Pawar, applicant present in person

Mr. S.P. Sonpawale, APP for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 07th JUNE, 2022

PRONOUNCED ON : 10th JUNE, 2022

ORDER :

1 Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 by the original accused No.1 to challenge order passed in Criminal Revision Application No.17/2022 by learned Additional Sessions Judge, Dhule on 11.04.2022, by which the challenge to the order dated 21.02.2022 passed by the learned Judicial Magistrate First Class, Dhule (Court No.6) below Exh.95 in Regular Criminal Case No.477/2014.

2 Application Exh.95 was filed by the original accused No.1 (present applicant) and his son – accused No.2. It was contended in that application that the Court had issued summons to panch witness “Vrushali Sudhir Patil”, however, according to the accused persons, summons ought to have been issued in the name of “Vrushali Sudhakar Patil”. The summons should be issued to a proper person. Confirmation about the identity should be made by taking identity card like Aadhar Card and orders should be passed to that effect. It was then stated that if summons is issued illegally to some other person, then, it would amount to injustice and it may lead to further prosecution against the prosecuting agency itself.

3 Say was called from APP and it appears that from the prosecution said Vrushali Sudhir Patil gave say stating that though her name is appearing in the panchnama as “Vrushali Sudhakar Patil”, it is mistake. But she has signed the panchnama and the summons was issued at her address. Therefore, by producing her Driving Licence she prayed that the application should be rejected.

4 After considering the application and say as well as comparing the photographs on the driving licence, the signatures and the residential address, the learned Magistrate got confirmed that the person is same and,

therefore, the application was rejected. That was the order which was challenged before learned Additional Sessions Judge, Dhule in Criminal Revision Application No.17/2022 and the said revision application came to be dismissed on 11.04.2022.

5 Heard party-in-person i.e. the applicant himself and learned APP Mr. S.P. Sonpawale for the respondent No.2. Though the original informant has been made as respondent No.1, she is the formal party, as the case before the learned Magistrate is a State case.

6 The applicant has vehemently submitted that the Revisional Court went wrong in holding that the impugned order below Exh.95 is an interlocutory order and, therefore, the revision is barred under Section 397(2) of the Code of Criminal Procedure. The Revisional Court failed to consider that the vital rights of the accused persons were affected due to the rejection of their application. In fact, there is evidence to show that said Vrushali Sudhir Patil was absconding on the day she signed the alleged panchnama and she is having rival interest against the accused. She has been intentionally taken as panch. The applicant has proved to show that the lady is giving her fake identity. In fact, she got married in 2013 to a person by name Sudip Patil, who is residing in the same colony where the applicant

is residing. Therefore, after marriage her name is “Vrushali Sudip Patil”. She has a criminal background and also involved in preparation of fake documents. She cannot be allowed to be examined as a witness and, therefore, in advance the application was given that a proper person should be examined as a witness. There is another panch witness to the said panchnama and, therefore, from that person the said document can be got proved. But the prosecution cannot insist that they would examine the said lady only. The learned Revisional Court, therefore, committed error and hence the said revision deserves to be allowed and the order below Exh.95 about its rejection passed by learned Magistrate deserves to be set aside and the prosecution needs to be directed to examine a proper person.

7 Per contra, the learned APP has strongly opposed the application and submitted that the Revisional Court has considered it properly that the impugned order is an interlocutory order and, therefore, revision is not maintainable. Further, accused cannot insist as to whom the prosecution should examine. Accused cannot take control of the trial and, therefore, after ascertaining of the identity the learned Magistrate has allowed the lady panch as witness. There is absolutely no illegality or error by both the Courts below.

8 At the outset, it is to be noted that it is the prerogative of the prosecution as to whom they should examine as witness. Certainly, it cannot be controlled by an accused. If at all accused has any objection in respect of identity or is having knowledge about the said witness, then, accused can ask questions to that witness, when that witness is examined before the Court of law. But before examining, such objection cannot be taken by an accused. Accused cannot say that by examining a particular witness it would be the waste of Court's time. Whatever has been stated about the lady in the written notes of argument before the Revisional Court is based upon the personal knowledge of the accused-applicant and he can ask questions. Taking into consideration those facts in her cross-examination provided the Court finds those questions are relevant. Only on the basis of those statements of the accused it cannot be taken as a gospel truth. When the said application Exh.95 was filed, in which, the accused themselves had suggested that the Magistrate should take the identity proof. The identity proof has been considered by the learned Magistrate and then after coming to the conclusion that she is the same lady and accepting that there might be typographical mistake or mistake while writing on the part of the police, the prosecution was allowed to examine the lady. The said order below Exh.95 is certainly an interlocutory order and challenge to that order is barred under Section 397(2) of the Code of Criminal Procedure. The learned Additional

Sessions Judge was perfectly right in dismissing the revision petition. Though the applicant has tried to produce documents in respect of another case, wherein the said lady is an accused, however, it is to be noted that all those questions and circumstances can be put by the accused to her in her cross-examination. Resistance cannot be offered by the accused before the witness enters into the witness box. Under such circumstance, there is no case made out for invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to interfere in the orders passed by the Courts below. Application, therefore, stands rejected.

(Smt. Vibha Kankanwadi, J.)

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