

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.595 OF 2022

VIJAY S/O VENKATRAO PURANIK
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. S. A. Deshmukh, Advocate for petitioner.
Mr. R. B. Bagul, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07.06.2022

ORDER :-

- . Not on board. Upon mentioning, matter is taken on board.
2. Heard learned Advocate for the petitioner. Learned APP waives service for the respondent – State.
3. It appears that at Exhibit-119 in R.C.C. No.309 of 2004 an application on behalf of prosecution was given that since the prosecution want to file certain documents, the evidence should be reopened i.e. the side of the prosecution be reopened for the prosecution. It appears that prior to that date, pursis was given on behalf of the prosecution that the prosecution has closed its side for adducing evidence. After taking into consideration the say of the

accused, it appears that the learned Judicial Magistrate First Class, Partur has allowed the application and reopened the evidence of the prosecution. The said order below Exhibit-119 was challenged by the present petitioner in Criminal Revision Petition No.32 of 2020 before learned Additional Sessions Judge-1, Jalna and by judgment dated 13.11.2021, the said revision has been dismissed.

4. Learned Advocate for the petitioner submits that when the prosecution had closed its side or the said evidence was closed by an order passed by the concerned Magistrate, then it could not have been reopened merely on the say of the prosecution that the prosecution want to adduce some more documentary evidence. The documentary evidence which the prosecution now intends to file is not the part of charge-sheet. An opportunity to fairly contest the matter would then be taken away by the prosecution and, therefore, the impugned order deserves to be set aside.

5. Per contra, the learned APP submits that a fair opportunity has been given by the Magistrate to the prosecution to adduce evidence and a detailed order has been passed by the learned Additional Sessions Judge while dismissing the revision petition. The legality of the order below Exhibit-119 by the learned Magistrate has been tested by the

learned Additional Sessions Judge under the touch stone and parameters under Section 397 of the Code of Criminal Procedure and, therefore, there is no question of disturbing the same under the constitutional powers of this Court under Article 227 of the Constitution of India.

6. At the outset, from the order passed below Exhibit-119 by the learned Magistrate it appears that the present petitioner is facing charge for the offence punishable under Sections 408, 409, 420, 468 and 477-A of Indian Penal Code and the case is about 16 years old. Definitely, there is delay in trial, but at the same time it will have to be seen that each party would get proper opportunity to adduce evidence. The prosecution side for leading evidence appears to have been closed by an order passed by the then Magistrate and now the prosecution intends to produce certain documents on record. Along with Exhibit-119, no list appears to have been provided and even the reason, as to why these documents which the prosecution intends to file now were not filed earlier, appears to have not been given. When such application would be filed, the accused definitely has an opportunity to contest that application, but without taking into consideration the relevancy of those documents with the case, it cannot be said that the accused will not have any opportunity to contest the case further or will not be in a

proper position to take appropriate defence. That gate is still open for the petitioner. Fair opportunity needs to be given to the prosecution and, therefore, the learned Additional Sessions Judge has held that the said order has been passed by the learned Magistrate under Section 311 of the Code of Criminal Procedure. That power can be exercised even before the pronouncement of the judgment and under such circumstance, when there is still an opportunity available to the accused to contest the matter, it cannot be said that the order passed below Exhibit-119 by the learned Magistrate is illegal. The legality has been already tested under Section 397 of the Code of Criminal Procedure and, therefore, there is no question of exercising powers of this Court under Article 227 of the Constitution of India. The writ petition stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm