

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL APPLICATION NO.2311 OF 2022

GANESH KAMLAKE SURVE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Mr. Patil Vijay Bhalerao
APP for Respondent No.1 – State : Mr. B. V. Virdhe

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21.07.2022

ORDER :-

- . Heard learned Advocate appearing for the applicants.
2. The facts giving rise to the present application under Section 482 of the Code of Criminal Procedure with Article 227 of the Constitution of India are that in Special Case No.24 of 2020, the learned Additional Sessions Judge (Fast Track Special Court), Jalgaon while recording testimony of P.W.10 - Dr. Kanchan, who is the medical officer, had given directions to her to record the final opinion. It was in the background that the medical officer had examined the prosecutrix and had given provisional medical report. It will have to be said that it was a provisional, though it is not so mentioned, but then the CA reports were not before the medical officer at that time. The samples were collected

and it appears that those were sent for chemical analysis. Paragraph No.22 of the report says that it is provisional medical opinion. By a detailed order, even after recording the objection raised by the present applicants – original accused persons, directions were given by the concerned Court to record the final opinion on the same report, which was already before the Court and then it is stated that it was exhibited. After going through the CA report which was then before the Court at the time of deposition of P.W.10, it has been opined that “there is possibility of sexual violence” and the said opinion has been given on 03.06.2022 at 12.06 p.m. i.e. before the concerned Court. It can also be seen from the record that has been produced that thereafter the cross was conducted on behalf of both the accused, that means after that document came to be exhibited, both the accused had opportunity to cross examine the same witness who had given the final opinion.

3. Now, the point that has been tried to be canvassed is whether the concerned Court can give such directions. At the outset, this will have to be observed that the question that is raised in this application is available to be raised by the present applicants if at all there is conviction and they are required to file an appeal. The Appellate Court in that context would be in a better position to assess all the necessary evidence on record. Here, under the inherent powers under Section 482

of the Code of Criminal Procedure and also the constitutional powers under Article 227 of the Constitution of India, it is limited to see whether then the learned Additional Sessions Judge was justified in giving such directions to PW.10. When it was pointed out to the learned Advocate appearing for the applicants that the applicants can still raise the said point and if any opinion is finally given by this Court in this application it would be a hurdle for the applicants in the probable appeal. He submits that by keeping the said point open, he be allowed to withdraw the application.

4. Section 45 of the Indian Evidence Act provides that when the Court has to form an opinion upon a point of science, the opinions upon that point of persons specially skilled in such science are relevant facts. Such persons are called experts. The point, therefore, which the Appellate Court will have to consider, would be whether those directions sought from PW.10 were under Section 45 of the Indian Evidence Act taking into consideration PW.10 as an expert in medical science. Therefore, it is in the interest of the applicants to allow them to withdraw this application by keeping the said point open. Accordingly, the application stands disposed of as withdrawn.

[SMT. VIBHA KANKANWADI, J.]

scm