

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO.335 OF 2019**

|                                       |   |                      |
|---------------------------------------|---|----------------------|
| Ramesh @ Rajabhau S/o Navnath Kokate, | ] |                      |
| Age : 34 Years, Occu. Agri.,          | ] |                      |
| R/o. Village Nipani, Tq. Bhoom        | ] |                      |
| Dist. Osmanabad.                      | ] | <b>... Applicant</b> |

***Versus***

|    |                                       |   |                         |
|----|---------------------------------------|---|-------------------------|
| 1. | The State of Maharashtra,             | ] |                         |
|    | Through the Superintendent of Police, | ] |                         |
|    | Osmanabad, Dist. Osmanabad.           | ] |                         |
| 2. | The In-charge Investigation Officer,  | ] |                         |
|    | Police Station, Washi,                | ] |                         |
|    | Tq. Washi, Dist. Osmanabad.           | ] | <b>... Respondents.</b> |

. . .  
Advocate for Applicant : Mr. Vikram S. Undre  
APP for Respondents – State : Mrs. P. V. Diggikar  
. . .

**CORAM : BHARAT P. DESHPANDE, J.**

**DATED : 26<sup>th</sup> JULY 2022**

**ORDER :**

Heard learned counsel for the applicant and learned APP for the State. Present Revision Application is filed challenging the order dated 1<sup>st</sup> October 2019 passed by the learned Additional Sessions Judge, Bhoom in Sessions Case No.56 of 2015 below Exhibit-49, thereby rejecting application filed by the applicant for discharge under section 227 of the Code of Criminal Procedure.

2. Learned counsel for the applicant strenuously urged that the learned trial court has failed to consider the evidence collected by the Investigating Agency in the form of CCTV footage and certificates under section 65-B of the Evidence Act, obtained from the concerned Authorities, i.e. from the State Bank of India, Beed and the High Court of Bombay Bench at Aurangabad, wherein the applicant was seen at the relevant time. The main contention is that the applicant was not present at the spot of offence as alleged by the prosecution. It has been strongly contended that the plea of alibi is fully established on the basis of such material and the learned trial court has failed to consider only on the ground that such CCTV footage is not accompanied with the certificates under section 65-B of the Evidence Act. He invited attention of this court to the observations in para 12 of the impugned order of the learned trial court in this regard.

3. Learned APP strongly objected and submitted that the other material collected by the Investigating Agency has been perused by the learned trial court and on that basis the application for discharge has been rejected.

4. On perusal of para 12 of the impugned order, it clearly shows that the learned trial court rejected the CCTV footage to be considered as conclusive proof only on the basis that certificates under section 65-B of the Evidence Act are not produced on record.

5. Learned counsel for the applicant has pointed out that such certificates are already part and parcel of the charge-sheet. The certificate from the State Bank of India is dated 18<sup>th</sup> January 2020, which is at page no.70, whereas, second certificate under section 65B of the Evidence Act is issued on 20<sup>th</sup> January 2020 in connection with the footage collected from this Court dated 26<sup>th</sup> August 2015.

6. Charge-sheet shows that alleged incident took place on 26<sup>th</sup> August 2015 at Ieet, Taluka Bhoom, District Osmanabad, whereas CCTV footage of that date shows presence of the applicant at State Bank of India, Beed at 3.35 p.m. at ATM Center at Beed, whereas the other CCTV footage collected from this Court shows presence of the applicant in the High Court premises at 11.35 to 11.37 a.m. It is alleged that the incident occurred at 3.30 p.m. at village Ieet, Taluka Bhoom, District Osmanabad.

7. It is clear from the record that learned Additional Sessions Judge rejected CCTV footage to be considered for the purpose of discharge only on the ground of non production of certificates under section 65-B of Indian Evidence Act by the Investigating Agency. It is now submitted that trial court decided application for discharge on 01<sup>st</sup> October 2019, whereas certificates under section 65-B were produced on 18<sup>th</sup> January 2020. Therefore, findings of the learned trial court on this aspect cannot be faulted with.

8. However, since the certificates are now collected and being part of the charge-sheet, applicant deserves an opportunity to argue on this aspect in order to satisfy the trial court on the case of discharge under section 227 of Cr.P.C., since at the relevant time prosecution failed to collect the certificates under section 65-B of the Evidence Act.

9. Learned counsel for the applicant submits that applicant was not at fault as prosecution failed to collect such certificates and produce it along with charge-sheet at that relevant time.

10. In the interest of justice, it is necessary to give an opportunity to the applicant to argue this point before the learned Sessions Court and to consider the certificates which are already on record.

11. Learned APP fairly submitted that the certificates were submitted subsequent to the passing of impugned order, however, she opposed the present revision on the ground that the learned Sessions Court considered other evidence while rejecting the application.

12. Since it is observed that certificates were not available at the relevant time and on that ground CCTV footage was not considered as evidence for the purpose of application for discharge, it is necessary to quash and set aside the order and to remand the matter back to the Sessions Court by giving an opportunity to the applicant to argue his application afresh.

13. It is made clear that no separate ground could be added to the earlier application which is already decided that impugned order. It is made clear that this court is not expressing anything on merits of the matter.

14. In view of this, present Revision Application could be disposed of, hence the following order:

**ORDER**

- (I) Criminal Revision Application is partly allowed.
- (II) The impugned order dated 01<sup>st</sup> October 2019 below Exh.49 in Sessions Case No.56 of 2015 on the file of Additional Sessions Judge, Bhoom is hereby quashed and set aside.
- (III) Application for discharge is restored to the file of the Sessions Court.
- (IV) Applicant is granted an opportunity to argue his application afresh, thereafter, the learned Sessions Court to decide the application, as expeditiously as possible.
- (V) Criminal Revision Application stands disposed of.

( BHARAT P. DESHPANDE, J.)