

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1426 OF 2022

Gopal Bujappa Sagar & Anr.	... Petitioners
V/s.	
The Central Bureau of Investigation & Anr.	... Respondents

Mr. Prasanna Shahane i/b y Mr. Milind Deshmukh for
the petitioners.

Mr. H.S. Venegaonkar with Mr. Bharat Mirchandani for
respondent no.1/CBI.

Mr. R.M. Pethe, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 8, 2022

P.C.:

1. The petitioner/original accused is challenging order dated 23rd February 2022 passed by the learned Special Judge (CBI), Satara below Exhibit 47 in Special Case No.2 of 2016 permitting the prosecution to produce documents in the form of acknowledgment receipt of letter dated 8th December 2015, its photocopy and original letter received by the second complainant addressed by the accused.

2. The petitioner has been charged with offence punishable under section 7 of the Prevention of Corruption Act, 1988. The

prosecution examined two (2) witnesses and the cross-examination was also complete and thereafter the prosecution filed an application to place on record the documents. The said application was opposed by the petitioner. The learned Special Judge by the impugned order allowed the application by granting liberty to the petitioner to cross-examine the witness in respect of the documents produced.

3. Learned advocate for the petitioner submitted that except section 173(8) of the Criminal Procedure Code, 1973, there is no provision in the Criminal Procedure Code to enable the prosecution to file such documents. According to him, there was delay in producing such documents as the documents have been produced after six (6) years.

4. Per contra, Mr. Venegaonkar, learned special advocate for the CBI placed reliance on an unreported judgment of this Court in Criminal Writ Petition No.4712 of 2014 (**Niwas Keshav Raut v. The State of Maharashtra**) decided on 28th July 2015. He submitted that this Court interpreting section 294 of the Criminal Procedure Code permitted the course adopted by the prosecution and, therefore, there is no merit in the petition.

5. Having considered the submissions on both sides, it appears that the impugned order protects prejudice, if any caused to the petitioner by granting liberty to the petitioner to cross-examine the witness in respect of the documents produced.

6. In so far as power of the Court to allow such production is concerned, learned Single Judge of this Court in the case of

Niwas Keshav Raut (supra) has observed in paragraph 11 thus:

“11. The significant aspect of Section 294 Cr.P.C., one must note, is that it no where places any embargo upon the prosecution or accused to file a document at a stage subsequent to filing of the charge-sheet. It only says that if any document is sought to be produced before the Court, it should be included in the list of the documents and then the other side should be called upon to either admit or deny the genuineness of the document. It means by necessary implication that a document can be filed subsequent to filing of charge-sheet subject to following the procedure prescribed in Section 294. Then, it is not necessary for the accused, who is called upon to admit or deny the document, to choose either of these options and he may simply keep silence in respect of the document which may as well be an expression of his fundamental right under Article 20(3) of the Constitution of India which says that no person accused of any offence shall be compelled to be a witness against himself. In case the accused chooses to deny the document or just remains silent in that regard, the document cannot be admitted in evidence and it would be required to be proved in accordance with law, having regard to the right of the accused under Article 20(3) of the Constitution of India. However, when the prosecution, which is called upon by the accused, to admit or deny the document, does neither of the things and chooses to stay put with the document, a different situation would arise. In such a case, perspective of the right would change from that of fundamental to procedural, for, Article 20(3) is available to only those persons who are accused of any offence and not to those who allege commission of offence by others. Therefore, a criminal Court would have to meet silence of the prosecution in respect of a document in a different way, depending on the nature and contents of the document and the law of proof of documents applicable to the fact situation. In other words, facts of each case would trigger the effect of prosecution silence under Section 294 of Code of Criminal Procedure. Having analysed Section 294, Cr.P.C., so, let us now examine the impugned order for its congruence to law or otherwise.”

7. In view of the interpretation made by this Court, in my opinion, there is no perversity in the order passed by the learned Special Court granting opportunity to the prosecution to produce the document. There is no miscarriage of justice.

8. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)