

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

CRIMINAL WRIT PETITION NO.6268 OF 2021

Mahesh Rajaram Kadam and Ors. ...Petitioners
Versus
The State of Maharashtra ...Respondent
Mr. Hrishikesh Mundargi i/b Mr. Pravada Raut, for the Petitioners.
Ms. Anamika Malhotra, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 31st JANUARY 2022

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of respondent-State.
3. By this petition, the petitioners have impugned the order dated 26th November 2021, passed by the learned Additional Sessions Judge,

Malshiras, Solapur in Sessions Case No. 38 of 2016, by which, the learned Judge partly allowed the application filed by the prosecution seeking recall and re-examination of certain witnesses, under Section 311 of the Code of Criminal Procedure.

4. Learned Counsel for the petitioners submits that the said order passed by the learned Additional Sessions Judge on 26th November 2021 was contrary to law, inasmuch as, the said application was preferred by the prosecution at the fag end of the trial, after the arguments of the defence had concluded and written submissions were filed by the accused. He submits that the application (Exhibit – 156) preferred by the prosecution seeking recall and re-examination of certain witnesses under Section 311 of Cr.PC, was bereft of any details i.e. on which aspect and the purpose for which the said witnesses, are to be recalled/re-examined. He submits that in the absence thereof and having regard to the fact that the said application was made at the fag end of the proceedings, after the defence had declared their defence, the learned Judge ought not to have been entertained the said application filed by the prosecution.

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5. Learned APP opposes the petition. She, however, does not dispute the fact that the application filed by the prosecution is bereft of details i.e. the purpose and on which point, recall of the said witnesses is sought. She submits that if the Court is inclined to quash and set aside the said order, the prosecution be permitted to file a fresh application setting out the details and purpose for which the said witnesses are required to be recalled.

6. Perused the papers. The petitioners are accused, who are facing trial in connection with C.R. No.326 of 2016, registered with the Akulj Police Station, District – Solapur Rural, for the alleged offences punishable under Sections 302, 341, 506, 212, 201, 120B r/w 34 of the Indian Penal Code. The petitioners pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 14 witnesses. After the said witnesses were examined, the statement of the petitioners – accused were recorded under Section 313 of Cr.P.C. Thereafter, arguments commenced and written submissions were filed by the defence counsel on behalf of the petitioners. It appears that at this stage that the public prosecutor preferred an application under Section 311 of Cr.P.C. on 20th

October 2021 seeking recall and re-examination of certain witnesses. The witnesses whose recall and re-examination was sought, were as under:-

- a. PW 3 – Minakshi Pandurang Saste
- b. PW 5 – Pravin Shivaji Godse
- c. PW 6 – Jalindar Shankar Waghambre
- d. PW 7 – Rahul Laxman Khatke
- e. PW 11– Santoshkumar Hukumchand Doshi
- f. PW 13 – Namdev Devgiri Gosavi
- g. Muddemal Carrier to the CA
- h. Expert Analyser from CA Lab
- i. Tehsildar TI Parade Conducted
- j. Dhanaji Jalinder Chavan
- k. Investigation Officer PW-14.
- l. Uglal Pradhan Chavare, P.N.B.No.1835
- m. Bhibhishan Vishwanath Vyavahare

7. The said application was opposed by the petitioners. The learned Judge after hearing the parties was pleased to partly allow the said application preferred by the prosecution, vide order dated 26th November 2021, which order has been impugned in the present petition.

8. On the last date, the learned counsel for the petitioners fairly stated that although he was objecting to recall and re-examination of PW 1-Bhibhishan Vishwanath Vyavahare (informant), PW 5-Pravin Shivaji Godse, PW 6-Jalindar Shankar Waghambre, PW 11-Santoshkumar Hukumchand Doshi, PW 14-Investigating Officer, he had no objection, if the prosecution examines the muddemal carrier to the CA, the expert analyser from CA Lab, Tehsildar who conducted the TIP and Dhanaji Jalinder Chavan, who recorded the statement of the informant at the spot, Hence, vide order dated 11th January 2022, this Court after hearing the parties, directed the trial Court, not to examine PW 1-Bhibhishan Vishwanath Vyavahare (informant), PW 5-Pravin Shivaji Godse, PW 6-Jalindar Shankar Waghambre, PW 11-Santoshkumar Hukumchand Doshi, PW 14-Investigating Officer, however, permitted the prosecution to examine the other witnesses from the list which is at page 263 i.e. from (g) to (j).

9. Learned Counsel for the petitioners submits that despite the prosecution being permitted to examine the said witnesses, the prosecution has not taken any steps to have the said witnesses summoned by the Court

nor have filed any application in connection with the same. He submits that the petitioners are languishing in jail for the last six years.

10. A perusal of the application (Exhibit – 156) filed by the prosecution seeking recall and re-examination of certain witnesses under Section 311 of Cr.PC, shows that the said application is absolutely bereft of any details i.e. for what purpose the said witnesses i.e. PW 1, PW 5, PW 6, PW 11 and PW 14, are sought to be examined. Since, the application is bereft of details, the said order permitting recall/re-examination of the said witnesses i.e. PW 1, PW 5, PW 6, PW 11 and PW 14, cannot be sustained and is liable to be quashed and set aside on this sole ground, to that extent.

11. Accordingly, the petition is partly allowed and the impugned order dated 26th November 2021, passed by the learned Additional Sessions Judge, Malshiras, Solapur in Sessions Case No. 38 of 2016, is quashed and set aside, to that extent, as stated aforesaid.

12. If an application is filed by the prosecution for recalling/re-examination of the said witnesses, setting out the reasons for the same, the

learned Judge to consider the same, on its own merits, after hearing the advocate for the petitioners and keeping in mind the law with regard to the same.

13. As far as the other witnesses who were permitted to be examined, the learned Judge to ensure that prompt steps are taken by the prosecution, failing which, the learned Judge to proceed with the trial, in accordance with law. Having regard to the fact, that the petitioners are languishing in jail for the last six years, the trial of the petitioners is expedited. The learned Judge to conclude the case as expeditiously as possible and in any event within 3 months from the date of receipt of this order.

14. Rule is made absolute on the aforesaid terms. Petition is accordingly disposed of.

15. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.