

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2747 OF 2021

Poojashri Digambar Narvekar ...Petitioner

Versus

The State Of Maharashtra And Anr. ...Respondents

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Mr. Prashant Gurav, Advocate for the Petitioner.

None for respondent No.2.

Mr.Arfan Sait, APP for the Respondent No.1 – State.

PSI Pooja Gaikwad, Kalachowki Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th SEPTEMBER, 2022

PC :

1. The Petitioner has challenged order dated 17.07.2021 passed below Exhibit-65 in C.C. No.1099/PW/2015 by the learned Metropolitan Magistrate, 15th Court, Mazgaon, at Sewree, Mumbai and seeks to expunge the remarks dated 18.03.2021 made against the Petitioner in deposition of PW-3.

2. The Petitioner is the complainant in C.C.No.1099/PW/2015 arising out of C.R.No.320 of 2015 registered with Kalachowki Police Station, Mumbai against Respondent No.2 for offences punishable under Sections 354, 504 & 509 of Indian Penal Code (for short 'IPC').

3. The Petitioner is accused in C.C.No.253/PW/2016 arising out of C.R.No.319 of 2015 registered with Kalachowki Police Station,

Mumbai for offences punishable under Sections 324, 327, 504 & 506 of IPC. Both the cases are pending before the learned Metropolitan Magistrate, 15th Court, Mazgaon, at Sewree, Mumbai.

4. The prosecution examined four witnesses in C.C.No.1099/PW/2015. The Petitioner was examined as PW-2. The father of Petitioner was examined as PW-3. His examination-in-chief was recorded on 10.03.2021. Since the witness stated that, he is not feeling well, case was adjourned to 15.03.2021. PW-3 was absent on 15.03.2021 and 16.03.2021. Applications were preferred for adjournment on 15.03.2021 and 16.03.2021 on health ground of PW-3. On 16.03.2021, the learned Magistrate adjourned the case to 17.03.2021. In the order dated 16.03.2021 passed below application for adjournment Exhibit-50, it was observed that, the informant (Petitioner) again in a very brazen and blatant manner have tendered application this time for adjournment. According to her relevant papers were annexed alongwith Exhibit-49 and despite that the Court has fixed the matter on that days cause list. This is not the first time she is trying to take control of the proceedings. Despite order vide Exhibit – 33 no one pays heed to it. With such malafide intention she have moved applications prior. She is kind of fence sitter who sees to it that present matter do not proceed smoothly. Diagnostic centre reports dated 09.02.2021, filed by informant bears

same date 09.02.2021 for 'received report'. That means while entering in the witness box on 10.03.2021 she was aware of the reports but everything worked fine until completion of examination in chief and things changed once it was time for cross examination. By way of sympathetic and human approach same was adjourned till yesterday when the Court was kept waiting until 4.00 p.m. where she only turned up with adjournment. The out patient bill reveals otherwise and reveals the time 12.00 p.m. Taking into consideration, reasons cited in application of which witness was well aware of while entering in witness box on 10.03.2021 by way of last chance matter is adjourned to tomorrow. Failure on the part of prosecution to secure the presence of witness court will pass order in accordance with law regarding evidence of Digambar Narvekar. The said witness was absent on 17.03.2021 and 18.03.2021. Adjournment application was preferred. The learned Magistrate passed the order dated 18.03.2021 stating that, the witness absent when repeatedly called out till 1.00 p.m. As observed earlier the informant Poojashri Narvekar having total control and despite orders of this Court tries and avoids PW-3 Digambar Babu Narvekar (who is her father) from entering in witness box. No steps taken by prosecution to secure his presence for cross-examination. It is almost thrice that matter is adjourned. This Court does not wish to take coercive steps for

securing presence of witness PW-3 Digambar Narvekar, the reason being informant is allegation master. For reasons aforesaid evidence of PW-3 Digambar Babu Narvekar stands expunged.

5. The petitioner and prosecution preferred an application under Section 311 of Cr.P.C. for recall of PW-3 (Exhibit-54). In Paragraph-8 of the application, it was stated that the Court has completely ignored the health issue of PW-3. In Paragraph-12 of the application it was stated that, the original complainant has not levelled any single allegation against any judicial officer till date in last 5.5 years. The learned Magistrate vide order dated 01.04.2021 observed that, whether the aspect averred in Paragraph-8 was very well observed or ignored can be very well gathered from the discussion in order vide Exhibit-50. In the interest of justice, the evidence of PW-3 Digambar Babu Narvekar is revived with direction that informant do not play any dilatory tactics.

6. The petitioner preferred applications for expunging the remarks in order dated 18.03.2021. The application was rejected vide order dated 17.07.2021.

7. The petitioner preferred application before the in charge Chief Metropolitan Magistrate under Section 410 of Cr.P.C. seeking transfer of case to another Court. The said application was rejected by Order dated 07.06.2021.

8. The petitioner had challenged the order below Exhibit-41 in C.C.No.1099/PW-2015 dated 10.03.2021 rejecting application for Exhibiting statement recorded under Section 164 of Cr.P.C. by preferring Criminal Writ Petition No.2157/2021. Vide order dated 23.07.2021 the said Petition was allowed by setting aside aforesaid order and trial Court was directed to take steps for exhibiting statement under Section 164 of Cr.P.C.

9. Learned Advocate for the Petitioner submitted that there was no reason for the Court to observe that the informant (Petitioner) is allegation master and that she is having total control and despite orders of Court tries and avoids PW-3 from entering in witness box. The trial Court is biased against the Petitioner. The statement recorded under Section 164 of Cr.P.C. by the learned Magistrate was shown to the Petitioner during the recording of her evidence and she had admitted her signature and contents. Despite the aforesaid fact, the trial Court declined to exhibit the said statement. The application vide Exhibit – 48 was filed before the learned Magistrate for exhibiting the statement of original complainant recorded under Section 164 of Cr.P.C. However, vide order dated 10.03.2021, the application was rejected. The Petitioner filed Writ Petition No.2157 of 2021 before this Court challenging the said order and the said Petition was allowed vide order dated 23.07.2021. The health

condition of PW-3 was not good. He is aged around 80 years. He is father of the Petitioner. Medical examination report dated 15.03.2021 issued by Hospital indicate that, he was suffering from various ailments. The examination-in-chief of the said witness was completed but he was not feeling well. Cross examination was deferred to 15.03.2021. Reference was made to the health condition of PW-3 in order dated 10.03.2021. On 15.03.2021 PW-3 was absent due to ill health and therefore application for adjournment was filed. However, the case was kept on the next date i.e. 16.03.2020. The witness was not able to attend the proceedings due to health problems. Therefore another application was preferred for adjournment on 16.03.2020. The Court again kept the case on 17.03.2021. Application was preferred for adjournment. However, the case was kept on 18.03.2021. The learned Magistrate rejected the said application and labelled the Petitioner as 'Allegation Master'. The learned Magistrate had erroneously rejected the application for expunging remarks vide order dated 17.07.2021. There was no occasion for recording strictures/remarks in order dated 18.03.2021.

10. It is pertinent to note that, the Petitioner is complainant in C.C.No.1099/PW/2015. She was examined as PW-2. PW-3 is senior citizen aged around 80 years. He is the father of Petitioner. He had appeared before the Court on 10.03.2021. His examination-in-chief

was recorded. Since he was not feeling well, his cross examination was deferred. Apparently applications were made for adjournment on account of ill health of PW-3. The case was directed to be listed immediately on the next day. The learned Magistrate then passed order dated 18.03.2021. Perusal on record would indicate that, remarks appearing in order dated 18.03.2021 against the Petitioner were not warranted. The Petitioner moved an application for recalling the remarks which has been rejected by the learned Magistrate vide order dated 17.07.2021. The observations in the said order mentions that the theory put forth by the Petitioner and the Advocate is not supported by learned A.P.P. PW-3 and Advocate for the Petitioner are advised to go through their own applications moved on several occasions to find out/understand what compelled the Court to make certain observations. The Advocate to go through the Advocate's Act and understand his duties towards Courts and avoids scurrilous pleadings in future. In case, the same is seen repeated Court will be compelled to bring the same to the notice of Bar Council and seek action. It is pertinent to note that, the Advocate representing Petitioner had preferred application before the Court in accordance with law. However, the order depicts adverse remarks against him. The medical case papers annexed to the Petition refers to health condition of PW-3 Digambar Narvekar.

Vide order dated 18.03.2021, the trial Court had expunged the evidence of PW-3. The application vide Exhibit – 54 was preferred for recalling PW-3. In the said application it was stated that, original complainant has not levelled any single allegation against any judicial officers till date. The said application was signed by the Petitioner, PW-3 and learned A.P.P. Vide order dated 01.04.2021, the learned Magistrate observed that, the evidence of PW-3 is revived with directions that informant do not play dilatory tactics. It is pertinent to note that, the petitioner is the complainant/victim in the case. PW-3 is father of petitioner who is supporting petitioner's version.

11. Considering the aforesaid circumstances, the order dated 17.07.2021 passed by learned Magistrate rejecting application below Exhibit – 65 is required to be set aside and the adverse remark against the petitioner reflected in order dated 18.03.2021 are required to be expunged. Hence, I pass the following order :

ORDER

- (i) Writ Petition No. 2747 of 2021 is allowed.
- (ii) Order dated 17.07.2021 passed by Learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai rejecting application below exhibit-65 is set aside.

(iii) The remarks reflected in order dated 18.03.2021 passed by learned Metropolitan Magistrate , 15th Court at Mazgaon in CC No. 1099/PW/2015 are expunged.

(iv) Record and Proceedings may be sent to the trial Court.

(v) Stay of proceedings in C.C. No.1099/PW/2015 granted by this Court on 13th October 2020 stands vacated.

(PRAKASH D. NAIK, J.)