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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 921 OF 2021

Darshak Mahesh Rupani	...Applicant
Versus	
CBI, ACB, Mumbai	...Respondent

Mr. Sudeep Pasbola i/b Bhavesh Thakur for the Applicant.

Mr. H.S.Venegavkar for the CBI/Respondent No.1.

Mr. A.D.Kamkhedkar, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 5th APRIL, 2022

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. Mr. Venegavkar waives notice on behalf of the respondent No.1/CBI. Learned APP waives notice on behalf of the respondent No.2- State.
3. By this application, the applicant has impugned the order dated

7th September, 2021 passed by the learned Special Judge, Greater Bombay below Exhibit – 646 in Special Case No. 71 of 2006, by which, the learned Judge rejected the applicant's application seeking recall of four witnesses i.e. PW-35 – Ninad Sawant, PW-28 – Nitin Nikam, PW-1 – Arvind Jadhav and PW-2 – Chaturbhuj Das.

4. During the course of arguments, learned Counsel for the applicant does not press for recalling of two witnesses i.e. PW-35 – Ninad Sawant and PW-1 – Arvind Jadhav, and hence, the prayer for recalling the said witnesses is not required to be dealt with.

5. Perused the papers. Learned Counsel for the applicant states that recall of the said witnesses i.e. PW-28 – Nitin Nikam and PW-2 – Chaturbhuj Das is essential for the just decision of the case. He submits that it is necessary to examine PW-2 with respect to the register produced by him, though, not exhibited. Learned Counsel submits that since there are allegations that the applicant filed false income tax return, it is necessary to re-examine the said witness to confront him, with respect to different registers being maintained by the concerned ward. He submits that the said register is also a part of the chargesheet, though not exhibited. He further submits that as far as PW-28 - Ninad Nikam is

concerned, it is necessary to examine him only with respect to one document i.e. the Title Verification Report dated 15th October, 2001, which is on page 149 of this petition. He submits that the said title report is part of the chargesheet.

6. Mr. Venegavkar, learned SPP opposes recall of both the witnesses i.e. PW-2 and PW-28. Learned SPP does not dispute the fact that both the documents, though not exhibited, are part of the chargesheet.

7. Perused the papers. The petitioner (original accused No.6) has been chargesheeted by the respondent/CBI for the alleged offences punishable under Section 420, 465, 467, 471 r/w 120B of the Indian Penal Code and under Sections 13(2), 13(1)(a) of the Prevention of Corruption Act.

8. After chargesheet was filed, trial commenced. It appears that the prosecution examined as many as 35 witnesses. It appears that after 35 witnesses were examined, the applicant filed an application under Section 311 of the Cr.P.C. and sought recall of four witnesses i.e. PW-35 – Ninad Sawant, PW-28 – Nitin Nikam, PW-1 – Arvind Jadhav and PW-2 – Chaturbhuj Das. The said application was rejected by the learned Special

Judge. Learned Counsel for the applicant, presses for recall of only two witnesses i.e. PW-28 – Nitin Nikam and PW-2 – Chaturbhuj Das. As far as recall of PW-2 – Chaturbhuj Das is concerned, learned Counsel for the applicant states that having regard to the evidence that has come in para 2 of the examination-in-chief of the said witness, it is necessary that the said witness be recalled so that he can be confronted with the register which is part of the chargesheet, though, not exhibited. It is not necessary to recall the said witness for the said purpose, inasmuch as, the said register was not shown to the said witness and therefore, not exhibited. Since the said register is part of the chargesheet, it is always open for the applicant to question the investigating officer with respect to the said document which is part of the chargesheet and which was collected during the course of investigation.

9. As far as PW-28 – Nitin Nikam and Advocate is concerned, the said witness can be recalled and be examined only on the point of the ‘Title Verification Report dated 15th October, 2001’, which was prepared by the said witness. It is not in dispute that the said document is a part of the chargesheet and that the same was prepared by PW-28. The said witness in his examination-in-chief has not stated about the said report i.e. Title Verification Report dated 15th October, 2001 and hence the said document

was not exhibited. In the peculiar facts, the significance/purpose of the said document can be deposed to only by the said witness, since it was prepared by him. Neither does the learned Special P.P. seriously object to the same.

10. Considering the aforesaid, the application is partly allowed inasmuch as, PW-28 – Nitin Nikam is permitted to be recalled. The said witness is permitted to be cross-examined only on the ‘Title Verification Report dated 15th October, 2001’. It is always open for the prosecution to re-examine the said witness if the occasion so arises on this aspect.

11. Application is partly allowed and rule is made absolute on the aforesaid terms. The application is accordingly disposed of.

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

REVATI MOHITE DERE, J.