

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

CRIMINAL WRIT PETITION NO. 4695 OF 2021

Altaf Hussain Landge	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Ms. Tanvi Tapkire a/w Mr. Dhruv Balan for the Petitioner

Ms. Veera Shinde, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
THURSDAY, 6th JANUARY 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. Learned A.P.P waives service on behalf of Respondent – State.

3 By this petition, the petitioner has impugned the order dated 15th July 2021 passed by the learned Additional Sessions Judge, Sangli below Exhibit 45.

4 Learned counsel for the petitioner submits that on an oral application made by the Prosecutor, Auditory Analysis CA Report No. 13328/15, came to be exhibited by the learned Special Judge i.e. it was exhibited as Exhibit 84. Learned counsel for the petitioner submits that when the matter was posted for the final arguments and when the prosecution began to submit its final arguments on 18th June 2021 during the course of the submissions, the Prosecutor made an oral request to the learned Special Judge that the said auditory analysis report P(T) No. 13328/15 dated 14th July 2015 has not been exhibited and that the same be exhibited, as the prosecution intends to rely on the same. She submits that on the basis of the said oral request, the said auditory analysis report came to be exhibited as Exhibit 84, under Section 293 of the Code of Criminal Procedure (`Cr.P.C'). She submits that the petitioner filed an application objecting to the exhibiting of the said document, inasmuch as, the prosecution had not proved the same as per the provisions of law, however, the said application was rejected by the learned Special Judge.

5 Learned counsel for the petitioner submits that the learned Special Judge has misconstrued the provisions of Section 293 and that the said document was exhibited without formal proof of the said document

and that too, at the fag end of the trial, during final arguments, when the Prosecutor realised that the said document was not exhibited. She further submits that the said report which was exhibited i.e. Exhibit 84 is signed by the Scientific Officer of the Regional Forensic Science Laboratory and not by any Director, Deputy Director or Assistant Director, as mentioned in clause (e) of sub- Section (4) of Section 293 of the Cr.P.C. She further submits that under Section 293 sub-clause (4) Cr.P.C, the learned Special Judge could not have presumed that the Scientific Officer who signed the report has been notified by a notification when no such notification was produced by the prosecution on record. She submits that since the science of audio analysis and comparison of voice samples is not a perfect science, it was incumbent for the prosecution to prove the document through a witness.

6 Learned A.P.P opposes the petition. She submits that no interference is warranted in the impugned order and that under Section 293 (4)(g) Cr.P.C, it was well within the realm of the prosecution to produce the document and for the Court to exhibit the same.

7 Perused the papers as well as the impugned order. The petitioner is the original accused in CR No. 1/2014 registered with the Palus

Police Station for the alleged offences punishable under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act. The said case is pending before the learned Additional Sessions Judge, Sangli, and is numbered as Special Case (ACB) No. 5/2014. After framing of charge, the prosecution led evidence in support of its case. After examining the witnesses, the prosecution filed closure *purshis*, after which, 313 statement of the accused i.e. the petitioner, was recorded and the matter was posted for arguments. It appears that during the course of the arguments, initially, the prosecution did not rely on the report of the auditory analysis and hence, did not make any request to exhibit the same. However, later, on 18th June 2021, during the course of the arguments, prosecution made an oral request to the learned Special Judge and requested that the auditory analysis report had not been exhibited and that the same be exhibited, as the prosecution intends to rely on the same. On the basis of the said oral request, it appears that the learned Special Judge exhibited the said document and marked it as Exhibit 84. The said document was exhibited on the oral request of the learned Prosecutor under Section 293 of the Cr. P.C. It appears that the petitioner's Advocate objected to the exhibiting of the said report, as the prosecution had not proved the same in accordance with law. Despite the same, the said document was exhibited. It appears that thereafter, the petitioner made an application before the learned Special

Judge, Sangli on 21st June 2021 (Exhibit 85). The prosecution submitted its say to the said application on 22nd June 2021 (Exhibit 86). Learned Special Judge, after hearing the parties, dismissed the said application of the petitioner vide the impugned order dated 15th July 2021. The learned Special Judge, after considering that the report could be exhibited under clause (g) of sub-Section (4) of Section 293 of the Cr.P.C, accepted the prosecution's contention. The learned Judge also observed that it is necessary to presume that the Scientific Officer will sign the report as specified by the notification despite the fact, that no notification was produced on record by the prosecution in support of the same. It appears that the said report was signed by the Scientific Officer of the Regional Forensic Science Laboratory and not by any Director, Deputy Director or Assistant Director, as mentioned in clause (e) of sub-section (4) of Section 293 Cr.P.C. Clause (g) of sub-section (4) of Section 293 of the Cr.P.C applies to any Government Scientific Expert specified by notification, by the Central Government for the said purpose. Admittedly, no such notification was produced by the prosecution.

8 Considering the aforesaid, the impugned order cannot be sustained and as such, is quashed and set-aside and the document exhibited as Exhibit 84 is de-exhibited. Needless to state, that the prosecution is at

liberty to examine the concerned witness, if they so intend to, to prove the said document.

9 Rule is made absolute on the aforesaid terms. The application is accordingly disposed of.

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

REVATI MOHITE DERE, J.