

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

***CRIMINAL WRIT PETITION NO. 4046 OF 2021
WITH
CRIMINAL INTERIM APPLICATION NO.2655 OF 2021
(FOR STAY)
IN
CRIMINAL WRIT PETITION NO. 4046 OF 2021***

Prakash Mathurdas Karani	...Petitioner
Versus	
Bosco Henry Abajo and Ors.	...Respondents

Mr. Prasad S. Rane a/w Mr. Prashant L. Rathod, for the Petitioner.

Mr. Mohan Rao, for the Respondent Nos.1 to 3.

Mr. A. D. Kamkhedkar, A.P.P for the Respondent No.4– State.

PSI – Prakash Sawant, Gamdevi Police Station, Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th MARCH 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. Rao waives notice on behalf of the respondent Nos.1 to 3. Learned APP waives notice on behalf of the respondent No.4- State.

3. By this petition, the petitioner has impugned the order dated 6th October 2021, passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, below Exhibit – 42 in C.C. No.619/PW/2017, by which the learned Judge rejected the prosecution's application filed under Section 311 of the Code of Criminal Procedure seeking recall of PW1 i.e. the First Informant and re-examination of witnesses – Ganaur Pooran Sahoo and Avdesh Prasad Singh @Audh Paspas Singh.

4. During the course of hearing, the learned counsel for the petitioner did not press his prayer seeking recall of PW1, since the Court was not inclined to pass an order recalling PW1, in the case, since PW1 was examined at length. Learned Counsel, however, requests that the two witnesses i.e. Ganaur Pooran Sahoo and Avdesh Prasad Singh, be examined for the just decision of the case.

5. Learned Counsel for the respondent Nos.1 to 3 opposes the petition.

6. Perused the papers. The petitioner is the First Informant, who has filed a complaint as against the respondent Nos. 1 to 3, alleging offences punishable under Sections 448, 452, 457, 504 r/w 34 of the Indian Penal Code. After investigation, charge-sheet was filed as against all the aforesaid respondents.

7. On 10th September 2018, charge was framed as against the said respondent Nos.1 to 3. Thereafter, PW1 – Prakash Karani (petitioner herein), PW2 – Rajaram Rode, PW3 – Yogesh Parit and PW4 – Sambhaji Miranje, were examined. It appears that the last witness was examined some time in March 2020. It appears that thereafter due to the SOPs and guidelines of this Court, the matter could not proceed as should have. Thereafter, after the Courts regular functioning resumed, the prosecution filed an application seeking examination of two witnesses i.e. Ganaur Pooran Sahoo and Avdesh Prasad Singh, eye-witnesses to the incident. The

said application was rejected by the learned Judge vide order dated 6th October 2021. Hence, this petition.

8. It appears that summons were issued by the trial Court to both the aforesaid witnesses, however, since they were not found, the matter proceeded in accordance with law. Today, learned counsel for the petitioner has tendered the fresh addresses of both the witnesses i.e. Ganaur Pooran Sahoo and Avdesh Prasad Singh alongwith the necessary documents. The said documents containing names and addresses of the said witnesses, is taken on record and a copy thereof is handed over to the learned APP as well as the learned counsel for the respondent Nos. 1 to 3. The addresses of both the witnesses are clearly mentioned in the said documents.

9. Since, fresh addressses have been provided by the learned counsel for the petitioner, it would be appropriate to direct the learned Judge to issue summons to both the said witnesses in order to give one last opportunity to the petitioner to have the said witnesses summoned, who are the eye-witnesses to the alleged incident. Learned APP also states that appropriate steps will be taken to ensure the presence of the said two

witnesses, before the trial Court.

10. Considering the aforesaid, the impugned order dated 6th October 2021, passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, below Exhibit – 42 in C.C. No.619/PW/2017, is partly quashed and set aside i.e. to the extent that it rejects the prosecution's application to examine two witnesses.

11. Petition is allowed to the extent that, the prosecution is permitted to examine the two witnesses i.e. Ganaur Pooran Sahoo and Avdesh Prasad Singh. The learned Judge to accordingly take steps to issue witness summons to both the said witnesses. If, for any reason, the witnesses do not appear, the trial to proceed, on its own merits, in accordance with law. It is made clear, that as far as recall of PW1 i.e. the First Informant is concerned, the prayer stands rejected.

12. Petition is allowed to the extent aforesaid and is accordingly disposed of. Rule is made absolute in the aforesaid terms.

13. In view of the aforesaid, the Interim Application (for stay) being Interim Application No.2655 of 2021, does not survive and the same is also disposed of.

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

REVATI MOHITE DERE, J.