

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

CR. WRIT PETITION NO. 4215 OF 2021

Vishnu Yashwant Jadhav ...Petitioner

Versus

The State Of Maharashtra ...Respondent

....

Ms. Sana R. Khan, Advocate for the Petitioner.

Mr. H. J. Dedhia, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 14th FEBRUARY, 2022.

PER COURT:

1. The petitioner is aggrieved by order dated 13th August, 2021 passed below Exhibit-484 by learned Additional Special Judge under Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act") Pune, in MCOC Special Case No.19 of 2015. The petitioner is tried for the offences under Sections 302, 143, 147, 148, 149, 120-B of Indian Penal Code (for short "IPC"), Section 3, 4(25)(27) of the Indian Arms Act and Sections 3(1)(i)(ii), Section 3(4) of MCOC Act.

2. The trial is in progress. Evidence of PW-28 – Dr. Ajay Aniruddha Taware is recorded. He conducted post-mortem of the deceased. While the said witness was under cross examination, the questions put to the said witness by

the Advocate for the petitioner were disallowed on the ground that the questions sought to be asked were irrelevant.

3. The two questions which were disallowed were as follows :-

1] Under which legal procedure you have seized the bullets and the skin, can you file the reference of the same on record?

2] It is the submission of the defence that you have not followed any procedure referred in legal books while seizing the bullets and skin.

4. The aforesaid questions were referred in the application preferred by the petitioner before the trial Court on 13th August, 2021. The application was rejected by the trial Court by order dated 13th August, 2021 by observing that considering the facts of the case, questions sought to be asked is irrelevant, therefore cannot be allowed, hence, application is rejected.

5. Learned Advocate for the petitioner submitted that subject questions put to PW-28 were important and relevant, in the light of the facts of the case and his deposition before the Court. In Paragraph - 19 of his deposition the witness had stated that in post-mortem report on page - 10

he has not mentioned that the bullets retrieved from the body were stained with blood, skin particles, tissues etc. The bullets retrieved might have been washed. He did not agree with the propositions of Modi's Medical Jurisprudence [22nd Edition Page No.348] that the bullets retrieved should not be washed. In Paragraph-20, the witness deposed that he has followed the guidelines laid down in Modi's Medical Jurisprudence regarding collecting and packing of bullets or any other evidence. He cannot tell on the basis of which book he followed the procedure of packing the bullets in plastic bottles. It is not true to say that there is specific procedure for packing of bullets in cotton in cardboard box. In the absence of specific identification marks, he cannot identify the bullets retrieved from the body. It is submitted that the witness has given contradictory versions. In Paragraph- 19 he stated that he did not agree with the proposition of Modi's Medical Jurisprudence and in Paragraph - 20 it is stated that he followed the guidelines laid down in Modi's Medical Jurisprudence. The witness can be cross examined to test his credibility and veracity. The questions were put to him to shake his credit and test his veracity. The questions were necessary. The witness did not follow the proper procedure. The accused is entitled for a fair trial. The questions were

legal and proper. The right of the cross examination, the witness cannot be denied. The petitioner was entitled to ask the question and put the suggestion as above. The learned Judge has passed cryptic order. No reasons were assigned for rejecting the questions put to the witness.

6. Learned APP submitted that the trial Court has rightly rejected the questions on the ground that they were irrelevant. In Paragraph – 28 of the deposition of PW-28 has stated that he collected skin from 8 entry wounds and preserved it by pinning the same on the cardboard. The witness has already deposed about the procedure followed by him in Paragraph Nos. 19 & 20 of his evidence. The trial Court is empowered to disallow irrelevant questions. No interference is required by this Court in exercise of powers under Article – 227 of the Constitution of India or Section 482 of Code of Criminal Procedure.

7. The evidence of PW – 28 indicate that, he is the Medical Officer who conducted post-mortem of the deceased in the present case. After recording his examination-in-chief, the defence has cross examined him on 6th July, 2021, 7th July, 2021 and 12th August, 2021. Cross examination was concluded on 13th August, 2021. He has been cross examined at length. He deposed that the bullets retrieved might have

been washed. He do not agree with the proposition of Modi's Medical Jurisprudence that bullets retrieved should not be washed. The said version of the witness was relating to washing of bullets retrieved. He further deposited that he followed guidelines laid down in Modi's Medical Jurisprudence regarding collecting and packing of bullets or any other evidence. He cannot tell on the basis on which book he followed the procedure of packing the bullets in plastic bottles. He had taken regular training. He also stated that he collected skin from 8 entry wounds and preserved it by pinning the same on the cardboard. Thus the questions put to him were answered by the witness. I do not find any infirmity in the order passed by the Sessions Court disallowing the questions on the ground that they are irrelevant. The question No.2 is by way of suggestions and connected with question No.1. Rejecting the questions on the ground as stated by learned judge does not affect the right of the accused for fair trial in the facts of this case. Since the questions were disallowed on the ground that they were irrelevant, the trial Court is not expected to pass lengthy order. I do not find any infirmity in the impugned order dated 13th August, 2021.

8. Hence, I pass the following order:

ORDER

Criminal Writ Petition No.4215 of 2021 is rejected
and disposed of accordingly.

(PRAKASH D. NAIK, J.)