

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 236/2022.

Suraj Pundlik Deshbhartar,
Aged about 35 years, Occupation
Private, resident of Nagpur.
Presently at Central Prison,
Nagpur.

... **PETITIONER.**

VERSUS

State of Maharashtra,
through PSO, PS Kalamana,
Nagpur.

... **RESPONDENT.**

Mr. M.N. Ali, Advocate for the Petitioner.
Ms.T.Khan, A.P.P. the Respondent.

CORAM : VINAY JOSHI, J.

DATE : JUNE 06, 2022.

ORAL JUDGMENT :

Heard learned Counsel for the parties. With their consent
matter is taken up for final disposal by issuing Rule, making the

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same returnable forthwith.

2. This petition is filed by one of the accused facing trial under the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act) bearing MCOC Case No.13/2017. Challenge herein is to some of the portion recorded by the Special Judge in the evidence of the Panch Witness namely P.W.8 - Kamlesh Shahu. It is the submission that inadmissible portion has been recorded by the Special Judge which is hit by Section 27 of the Evidence Act. According to the petitioner, the prosecution can not rely on inadmissible portion and therefore, the learned Special Judge has erred in recording inadmissible portion.

3. The State has resisted the petition by contending that Sections 25 to 27 of the Evidence Act would not come into play since the recorded portion can be used against the person who makes the statement, but, can not be used against the co-accused. It reveals from the record that the Special Judge has recorded evidence of panch witness i.e. P.W.8 in whose presence allegedly one of the co-

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accused has made disclosure statement. While making disclosure, he has referred the things which are disclosed by the present petitioner [accused], which are in paragraph no.2 and 3 of the evidence. It appears that at the time of recording said portion, the learned Counsel appearing for the petitioner raised an objection, however, the said objection was turned down by the Court by placing reliance on Section 30 of the Evidence Act.

4. Perusal of the disputed portion of evidence shows that as per the panch witness, the co-accused is an auto driver to whom the present petitioner has disclosed that they were planning to commit bank robbery. Probably it was a statement of the co-accused affecting himself and some other persons who are accused in the same trial.

5. Already the said portion is recorded by the Special Judge with specific note about objection against said recording. Having regard to the said fact the evidence recorded by the Special Judge cannot be struck down. However, at the time of final hearing, the

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petitioner can agitate the same grievance which would be considered and dealt with in accordance with law. All contentions in that regard are kept open.

6. Writ Petition is accordingly disposed of. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE