

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.378 OF 2019

1. Greenfield Plantation Private Ltd.
A Company registered under the Indian
Companies Act, through its Director, Mr.
Narendrakumar Anandlal Poddar
Aged Adult, Occ: Business,
R/o Somani Sadan, Behind Ujambawadi,
Ambapeth, Amravati -444601.
2. Narendrakumar Anandlal Poddar
Aged Adult, Occ: Business,
R/o Somani Sadan, Behind Ujambawadi,
Ambapeth, Amravati -444601.
3. Sharadkumar s/o Madangopal Chaudhari
Aged Adult, Occ: Business,
R/o Indu Industries, At Post Wani, Dist.
Yavatmal.
4. Yugpradhan s/o Pannalalji Mehta
Aged about 60 years, Occ: Business,
R/o Bajiprabhu Nagar, Ramnagar, Nagpur.
5. Premkumar s/o Rambilasji Agrawal
Aged Adult, Occ: Business,
R/o Jai Ambe Steel, New MIDC, Jalna

...APPLICANTS

---VERSUS---

1. Deoraj S/o Jethabhai Gosar
Aged about 73 years, Occ: Business,
R/o Digras, Dist. Yavatmal
2. State of Maharashtra,
Through Police Station, Digras, Dist. Yavatmal

...NON-APPLICANTS

Shri J.B. Gandhi, Advocate for applicants.

Shri Pushkar Deshpande, Adv. h/f Shri A.S. Shukla, Advocate for non-applicant no.1.

Shri S.A. Ashirgade, Additional Public Prosecutor for non-applicant no.2.

CORAM : G.A. SANAP, J.

DATE : DECEMBER 20, 2022.

ORAL JUDGMENT :

1. In this application, challenge is to the order dated 28.03.2019 passed in S.C.C. No.4 of 2010 by the learned Judicial Magistrate First Class, Digra (Court No.1), whereby learned Magistrate was pleased to allow the application at Exh.153 and permitted re-examination of the complainant on the points mentioned in paragraphs 2 to 7 of the application.

2. The learned advocate for the applicants submitted that no case was made out for conducting the re-examination of the witness. It is submitted that under the garb of the re-examination an attempt was made to fill-up the lacuna left in the case of the complainant. The learned advocate further submitted that reliance placed on the decision in the case of **Ramni @ Rameshwar Vs. State of M.P.** reported in **AIR 1999 SC 3544** was totally misplaced. He, therefore, submitted that the order, which suffers from the vices of illegality deserves to be quashed and set aside.

3. The learned advocate for non-applicant no.1 submitted

that relevant facts were pleaded in the application to justify the re-examination of the witness. He submitted that in the totality of the facts and particularly in view of the cross-examination, learned Magistrate found that the re-examination was necessary to explain the ambiguous circumstances brought on record. He further submitted that the Hon'ble Supreme Court in the case of *Ramni @ Rameshwar (supra)* has elaborately dealt with the scope of the re-examination. In this case, it is held that the question in the re-examination cannot be confined to ambiguity alone, which arises in cross-examination. The questions can be put to obtain the explanation required for any matter referred to in cross-examination.

4. With the assistance of the learned advocates for the parties, I have gone through the record and proceedings and particularly the order passed by the learned Judicial Magistrate First Class below Exh.153. The learned Magistrate relied upon the decision in the case of *Ramni @ Rameshwar (supra)* and came to the conclusion that the re-examination was necessary to explain the circumstances brought on record in the cross-examination and more particularly set out in paragraphs 2 to 7 of the application. It is to be noted that before passing the order an opportunity was granted to the applicants to oppose the said application. It can be seen that after conducting the full-fledged hearing on this limited issue the

impugned order was passed. In order to take care of the interest of the applicants, the learned Magistrate has observed that the applicant would have right to cross-examine the witness with regard to the answers given in the re-examination.

5. In my view, this care has been taken to avoid likely prejudice to the applicants, who are accused in the complaint. The legality and correctness of the order has to be examined in the backdrop of the above-stated factual position and the legal principle. As long as the right of the cross-examination of the accused is kept intact, after re-examination, the question of prejudice would not at all arise. On going through the record and proceedings, I am of the view that there is no substance in the application. However, before parting with the matter it needs to be stated that the learned Magistrate shall ensure that re-examination is confined to the points raised in paragraphs 2 to 7 of the application. The learned Magistrate shall ensure that sufficient opportunity of cross-examination to deal with each and every relevant fact brought on record in the re-examination be granted to the accused persons. In view of this, this application deserves to be dismissed. Accordingly, the same is dismissed.

JUDGE