

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

CRIMINAL WRIT PETITION NO. 528/2022

Khelanbai w/o Bhima Raut,
aged about 50 years, Occ. Labour,
R/o. Churdi at post Tiroda, Tah. & Dist.
Gondia.

... **PETITIONER**

VERSUS

State of Maharashtra through
Police Station Tiroda, Gondia.

... **RESPONDENT**

Mr. Virat Mishra, Advocate for petitioner.
Mr. H. D. Dubey, APP for respondent/State.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **16.09.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The petitioner is an accused in Sessions Case No. 135/2019
for the offence punishable under Sections 302 and 309 read with

Section 34 of the Indian Penal Code. The petitioner/accused impugned herein the order dated 07.06.2022 passed at Exhibit 64 (Pursis) by the Trial Court. It is submitted that without examining the mental condition of the witness, the Trial Court has virtually discarded the witness.

4. The facts are as such that during the course of trial, the prosecution has examined PW-4 (Panch witness), Hetram Raut who was Panch for spot panchanama as well as memorandum of accused. The record indicates that during chief examination witness (PW-4) has merely admitted his signature on spot panchanama, however, denied that accused had made disclosure in his presence. At this juncture, State has filed pursis Exh. 64 informing that the mental condition of witness is not sound, on which the Trial Court passed an order at Exh. 1, by which discarded the witness. The said action has been challenged by accused.

5. As a matter of fact, the witness has denied the memorandum, but merely stated that spot panchanama bears his signature. Even if it is assumed that there is something incriminating against accused, however, the Trial Court by passing specific order at Exh.1, discarded his evidence. Therefore, virtually nothing goes against accused to raise the challenge. The witness who is stated to be

mentally unfit, cannot be compelled to appear for facing cross-examination.

6. In view of above, petition does not carry merit, hence dismissed.

(VINAY JOSHI, J.)

Gohane

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