

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

58 CRIMINAL WRIT PETITION NO.346 OF 2023

**PANDURANG GHANSHYAM BADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

Mr. S. S. Jadhavar, Advocate for the petitioners
Mr. P. M. Kulkarni, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 21st APRIL, 2023

P. C.

1. Heard the learned advocate for the parties.
2. By way of this petition the petitioner has challenged the order passed by the learned District Judge and Additional Sessions Judge, Ahmednagar dated 17-02-2023 in Sessions Case No. 3/2017 thereby rejecting the application of the petitioner for allowing him to ask the question under Section 3 of the Evidence Act.
3. Facts in short are that:

- a] The accused-petitioners are facing trial for the offences punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code. Wife committed suicide and therefore, information came to be lodged by one Bhagwan Darade i.e. father of the deceased. The deceased was married six years prior to the incident. It is the allegations of the prosecution that the petitioners used to make a demand for dowry of Rs.10 lakhs. Since their demand was not fulfilled they started harassment to her. They also used to suspect on the character of the deceased.
- b] During the trial one witness PW-3 was examined and he was declared hostile and was cross-examined by the learned APP. Thereafter in the cross-examination by the accused a question was asked to the witness that in fact this witness had accused No. 1 who transferred the amount of Rs.50,000/- in the account of informant. This question was asked as this witness was mediator in the marriage and knows the informant since last thirty years. The accused is also having bank statement showing transfer the amount.

c] The learned trial judge did not allow to put the certain question to the witness. The petitioners therefore moved an application below Exh.92 as stated above. The learned Trial judge rejected the application stating that defense advocate is trying to put up a different story through this witness which is not story of the accused in defense. It is further observed that now advocate for the accused is trying to put certain questions about financial transaction between the PW-3 and accused No.1 without putting documents on record. It is observed that the accused will have an opportunity to step into the defense box to lead their defense evidence and rejected the application.

4. This court finds that a defense can certainly put a question to the witness in the cross-examination in respect of financial position or transaction when there is allegation of demand of amount by in-laws. Defense is always at liberty to put multiple defenses in the trial court by putting such questions. It cannot be said that questions by defense are irrelevant

questions. Even otherwise it is for the court to consider the evidence at the conclusion of the trial and at that time court can always discard the evidence if it is not relevant.

5. Though the application is opposed by the learned APP this court finds that no prejudice would be caused if such question is allowed to be asked. This court therefore finds that the order passed by the learned Sessions Court is not proper. Hence, the following order:-

ORDER

a] Impugned order dated 17-02-2023 passed by the learned Additional Sessions Judge, Ahmednagar on an application below Exh. 92 in Sessions Case No. 3/2017 stands allowed.

b] Since the case is pending since 2017 it is expected by the learned court to dispose off the trial as early as possible.

c] Parties to cooperate in the trial and shall not seek an adjournment unnecessarily.

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d] In view of above, criminal writ petition stands disposed off.

[KISHORE C. SANT, J.]

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