

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.464 OF 2023

ASHOK SHIVAJIRAO WAGHMARE  
VERSUS  
THE STATE OF MAHARASHTRA

...

Advocate for Petitioner : Ms. Rani Tandale h/f Mr. S.  
S. Thombre

APP for Respondents: Mr. S. P. Sonpawale

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 08, 2023

**PER COURT :**

1. This Petition takes exception to the order passed below Exh. 100 whereby the application filed by the accused for examining four witnesses came to be turned down.

2. Perusal of application Exh. 100 filed in Special Case No. 09/2014 shows that it is specifically averred therein as to the reason for which four witnesses i.e., Chandrabhan Palvade, Sarpanch, Thombre, Gram Sevak, D. B. Ugale, Rojgarsevak and Vasant Kale, Clerk, Panchayat Samiti, are to be examined.

3. Learned Counsel for the Petitioner states that Petitioners are facing charge for the offences punishable under the Prevention of Corruption Act. It

is submitted that after the evidence of prosecution was over and statements of accused persons under Section 313 of Cr.P.C. was recorded, the present application came to be filed for examination of witnesses. It is her submission that the learned trial Court has rejected the application mainly for the reason of statement under Section 313 of Cr.P.C that the same has been filed after the lapse of some months and no immediate steps were taken by the advocate for the accused to examine any witness.

4. Learned APP supported the impugned order by submitting that the accused in his statement under Section 313 has not claimed examination of any witness and it is only after lapse of period of 7-8 months application to examine witnesses is filed, hence, it is rightly rejected by trial Court.

5. Perusal of the impugned order does not show that the trial in Special Case No. 09/2014 was delayed only for the reason of accused. Record indicates that statement of accused under Section 313 of Cr.P.C came to be recorded on 10.03.2023 and thereafter, the matter was adjourned for final arguments on 8 dates during the

period of 7 months. There is nothing on record to indicate that these adjournments are attributable to accused only. Even otherwise, this cannot become sole ground for rejection of application to lead evidence in defence.

6. Perusal of the application Exh. 100 shows that the accused has explained the reasons for examination of these witnesses. Learned trial Court though has considered the evidence led by the prosecution on record and cross-examination of witnesses but has failed to record any specific finding that examination of these witnesses is not essential for the decision of the case. Record indicates that there is accusations against accused are related to Employment Guarantee Scheme of Panchayat Samiti, Kaij. Thus, it cannot be held that the witnesses are irrelevant for the decision of the case. Considering the right of accused to lead evidence in support of his stand, unless exceptional circumstance such vested right cannot be allowed to be forfeited.

7. Learned Counsel for the Petitioner, on instructions, makes statement that Petitioner on his

own will ensure the presence of these witnesses before the trial Court and that the evidence of these four witnesses shall be completed within a period of two months from today. The said statement is accepted as an undertaking to this Court.

8. In the interest of justice, the impugned order dated 02.02.2023 is set aside. Learned trial Court to permit Petitioner to examine four witnesses mentioned in application Exh. 100. Petitioner to examine those witnesses within period two months from today. No further extension of time shall be granted for this purpose. It is open for the trial Court to close the evidence of defence if the witnesses are not examined within this period. Learned trial Court is further directed to decide proceedings in Special ACB Case No. 09/2014 finally as per law by 31<sup>st</sup> December, 2023.

(R.M. JOSHI, J.)

Malani