

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 532 OF 2023

Ramrao s/o Murhari Phad

Petitioner

Versus

Mahadev s/o Abaji Phad & another

Respondents

Mr. S. S. Gangakhedkar, Advocate for the petitioner.

Mrs. G. L. Deshpande, APP for the State.

Mr. B. R. Kedar, Advocate for respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 12th SEPTEMBER, 2023.

PER COURT :

1. This petition takes exception to the order dated 14th March, 2023 passed below Exhibit 337 in Regular Civil Suit No. 37/2004.

2. Petitioner is accused in RCC No. 37/2004 for offences punishable under Sections 420, 468, 471 of Indian Penal Code. The entire trial proceeded on the premise that he is charged with these offences. On 14th March, 2023, learned Judicial Magistrate First Class altered the charge and added offence under Section 419 of the Indian Penal Code against the petitioner.

3. Learned counsel for petitioner submits that once charge is altered, it is within the right of the accused to cross examine the witnesses. It is his submission that the said right has been denied by passing the impugned order.

4. Learned counsel for the original complainant/respondent opposed the said submission by referring to the pendency of said proceeding since 2004. It is his submission that on the pursis filed by the petitioner no order has been passed by the Trial Court and hence it is open for the accused to file application seeking further cross-examination of the witnesses already examined. Without prejudice to this submission, he states that even otherwise the cross-examination of two witnesses conducted by the complainant shows that even offence punishable under Section 419 of the Indian Penal Code which is subsequently charged against the petitioner is duly covered.

5. Though it is the fact that RCC No. 37/2004 is pending since 2004, however, admittedly, the charge has been altered on 14th March, 2023. Needless to say that accused is within his right even to cross-examine the witnesses already examined by the

complainant/prosecution pursuant to the addition of charge against him. The contention of learned counsel for the respondent that no order could have been passed on the purpose and it is open for the accused to make appropriate application cannot be considered at this stage in view of the impugned order passed by the learned Magistrate. Perusal of the said order shows that the Magistrate has recorded finding that the cross-examination conducted earlier serves the purpose of accused. Thus, there is no propriety in calling upon the petitioner to file any fresh application before the learned Magistrate.

6. Section 416 of Code of Criminal Procedure empowers the Court to alter charge at any time before judgment is pronounced. Section 417 mandates that whenever a charge is altered or added to by the Court after the commencement of the trial, prosecutor and the accused shall be allowed to recall any witness who have been examined. Thus, it is the valuable right of accused to recall witness for further cross examination. Only in case, where Court records reason in writing to the effect that request for recall of witness is vexatious or to delay or defeat ends of justice, such recalling of witness can be refused. In the instant case, there is no reason to

hold that application filed by accused is vexatious or to delay proceedings.

7. In view of the fact that there is addition of charge, it cannot be presumed that the accused while cross-examining the witnesses examined by the complainant had anticipated any such additional charge to be framed against him. Hence, principles of natural justice require that the accused must get an opportunity to cross-examine those witnesses viz-a-viz additional charge framed against him. Needless to say that it is open for the Trial Court to prevent cross-examination to the extent which already forms part of record. In the result petition is allowed.

8. Learned counsel for both the sides make a statement that the next date of hearing before the Trial Court is 7th October, 2023. Learned counsel for petitioner/accused undertakes that cross-examination of these two witnesses would be concluded in two days. Learned counsel for complainant undertakes to keep both the witnesses present on 7th October, 2023. It is open for the Trial Court to permit conclusion of cross-examination in two working days. Since no further evidence is contemplated in the matter, learned Trial

Court is directed to dispose of the said proceeding on merit on or before 31st October, 2023.

(R. M. JOSHI)
Judge

dyb