

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1756 OF 2023

Mahendrasingh S/o Vikramsingh Chauhan ...Applicant

Versus

The Central Bureau of Investigation ...Respondent

...

Mr. A. D. Ostwal, Advocate for the Applicant.

Mr. B. B. Kulkarni, Advocate for the Respondent.

...

CORAM : R.M. JOSHI, J

DATE : JUNE 14, 2023

PER COURT :

1. Applicant, who is an accused in Sessions Case No. 78/2014, has preferred this Application under Section 482 of Code of Criminal Procedure raising challenge to the order passed below Exh. 1336 by learned Additional Sessions Judge, Latur, rejecting application for examination of defence witness Dr. T.S.N. Murthi Veraghavan.

2. It is the contention of the Applicant that he is one of the accused who is facing trial for the offences punishable under Sections 302, 364, 201, 203, 120-B read with Section 34 of the Indian Penal Code. It

is contended that as per the case of prosecution a missing complaint came to be lodged on 22nd March, 2014 by the brother of girl with MIDC Police Station, Latur. Thereafter, dead body of the said girl was found at Tuljapur Reservoir on 23rd March, 2014. Accidental death was registered vide A.D. No. 18/2014 with Tuljapur Police Station. Thereafter on 27th March, 2014 offence came to be registered at the instance of father of the deceased. Investigation into the said crime was completed and charge-sheet came to be filed on 26th June, 2014. Second and third supplementary charge-sheets were filed on 12th December, 2014 and 10th June, 2015 respectively. Thereafter, investigation was transferred to Central Bureau of Investigation (C.B.I.). After lapse of about three years, charge-sheet came to be filed by CBI on 14th October, 2019. Thereafter, charge came to be altered and offence punishable under Section 376(d) was framed against accused.

3. After completion of the evidence of prosecution and recording of statement of the accused, present Applicant filed an application vide Exh. 1336

for examination of defence witness and witness summons was sought to be issued to Dr. T.S.N. Murti Veraghavan. Learned Additional Sessions Judge issued witness summons accordingly. Thereafter, impugned order came to be passed whereby for the reason that the Applicant is trying to protract the trial, his request for the examination of defence witness came to be rejected and his evidence was closed.

4. Learned Counsel for the Applicant states that Applicant is facing serious charge of murder and criminal conspiracy. In order to defend himself, witness summons was asked and the learned Additional Sessions Judge after considering the relevancy of the said witness has issued witness summons to the Dr. T.S.N. Murti Veraghavan. It is submitted that merely because his presence could not be secured immediately, learned trial Court was not justified in closing the evidence of defence. According to him, prejudice and serious loss would cause if he is not permitted to examine the defence witness.

5. Learned Counsel appearing for Respondent – CBI opposed the said contention by stating that the Hon'ble

Apex Court has expedited the trial of Sessions Case No. 78/2014 and the same is to be completed by end of July, 2023. It is submitted that the learned trial Court has recorded reasons for rejecting the request for examination of defence witness. It is also submitted that in the opinion of learned trial Court examination of the said witness is not relevant. He further states that the arguments of the prosecution as well as defence Counsel are already over and therefore, this is not the stage wherein defence can be permitted to examine any witness.

6. Merely because arguments of prosecution and accused are over, the request of examination of defence witness cannot be rejected, if such evidence is necessary for the just decision of the case. Section 311 of Cr.P.C. empowers the Court to summons any person as witness, at any stage of trial. In case of such evidence is led, it is open for the parties to advance further arguments. Thus, this Court finds no substance in the objection raised on behalf of Respondent in this regard.

7. There is no dispute about the fact that Applicant along with co-accused is facing serious charge of murder and criminal conspiracy. In all criminal cases Principle of natural justice requires that accused must be given fair and reasonable opportunity to defend himself. This principle would apply with more rigor where the accused is facing serious charge like murder. There is no dispute about the fact that learned trial Court on application filed by the accused and being satisfied about relevancy of evidence issued witness summons to Dr. T.S.N. Murti Veraghavan. Therefore, now at later stage it is not open for the trial Court to hold that examination of the said witness is not relevant to the present case.

8. Main contention of learned Counsel for the Respondent while opposing application is has stated that the entire attempt of the Applicant is to protract the trial. In response to the said submission, learned Counsel for the Applicant, on instructions, made statement that if the Applicant is given an opportunity of examining the defence witness, he would ensure that the said examination of witness is completed on or

before 23rd June, 2023. He further states that if the Applicant is unable to examine Dr. T.S.N. Murti Veraghavan in the next week, then he would file an application on 16th June, 2023 before the trial Court for issuance of summons to a doctor from AIIMS, New Delhi or Civil Surgeon, Latur and that it would be the responsibility of the Applicant to serve the summons to the witnesses. He further undertakes that for any reason Applicant is unable to procure the presence of anyone of these witnesses on or before 23rd June, 2023, he waives his right to examine witness. These statements made on instructions by Counsel for the Applicant are accepted as an undertaking given to this Court.

9. The aforesaid voluntary undertaking given by the Applicant shall ensure that trial is concluded within the time limit fixed by the Hon'ble the Apex Court, which according to Counsels appearing for both sides is end of July, 2023. Hence, having regard to the nature of offence and the necessity for accused to examine defence witness, the impugned order deserves to be set aside. In the result, the following order :

O R D E R

- i) Impugned order dated 12th April, 2023 passed below Exh. 1336 in Sessions Case No. 78/2014 is set aside.
- ii) Applicant is directed to make an application on 16.06.2023 before learned trial Court for issuance of witness summons as undertaken herein above. Learned trial Court to make witness summons returnable on any date before 23.06.2023 and to allow Humdust to the Applicant/Accused.
- iii) It would be sole responsibility of the accused to serve witness summons to the witness he wishes to examine and secure his presence in Court.
- iv) The examination and cross-examination of such witness must be completed on or before 23rd June, 2023.
- v) If Applicant fails to examine witness, as per the undertaking given to this Court, his right to examine witness shall stand waived after 23rd June, 2023.
- vi) Learned trial Court to decide Sessions Case No. 78/2014 within the time limit prescribed by the Hon'ble the Apex Court.
- vii) Parties to act upon authenticated copy of this order.

(R.M. JOSHI, J.)