

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

34 CRIMINAL WRIT PETITION NO.887 OF 2022

THE STATE OF MAHARASHTRA
VERSUS
NITIN JAGAN PATIL @ PAPAI AND ANOTHER

Mr.Y.G. Gujarati, Advocate for the petitioner.
Ms.Megha B. Vaishnav, Advocate for respondent No.1.

CORAM : KISHORE C. SANT, J.
DATED : 16.01.2023

PC :-

01. Heard learned APP for the petitioner/State and learned Advocate for the respondent No.1.

02. During the course of trial, in the examination of PW-14 i.e. Sub-Inspector, Zilla Peth Police Station, who proved document Exh.126 i.e. complaint, which was written by him as per say of the informant, it is found that there is certain portion i.e. portion marked "A", which appears to have been inserted after the complaint was taken. In this portion marked "A", name of the accused transpired. In the cross-examination, this witness in para 8, to a question asked in the cross-examination, answered that from portion marked "A" on Exh.126, name of the accused is discovered during the course

of investigation. However, there is ambiguity as to who has inserted portion marked "A". It is for this reason, learned APP in the Trial Court, filed application calling this witness for re-examination for putting specific question, as to portion marked "A" in Exh.126. In the application, learned APP specifically mentioned two questions which are to be put to the witness as to in whose hand writing the inserted portion is written and secondly if the information was written as per the complainant, then as to how name of accused transpired and through whose statement it was transpired. However, learned Sessions Judge rejected the application observing that the prosecutor did not put this question during the course of the examination-in-chief. It is submitted that when the witness has proved the contents of the FIR, this question did not arise but asked him specific question as to how name of the accused transpired during the course of investigation. It is only because of the ambiguity that is created, has become necessary to put these questions in the re-examination. Therefore, the application for re-examination is filed. Therefore, the observations of the learned Sessions Judge is not correct.

03. Learned Advocate for the respondent submitted that in-fact it was duty of the prosecutor to get clarification during the course of examination-in-

chief itself since the document was very much on record. It was further necessary for the reason that the witness is an Investigating Officer and he could have stated in the examination-in-chief itself about the said portion. However, the prosecution is trying to fill up lacuna, which is not permissible.

04. After hearing the parties and judgment cited by the learned Prosecutor reported in 1999 AIR (SC) 3544 in the case of Rammi Vs. State of Madhya Pradesh, this Court finds that such application cannot be said to be merely for filling up lacuna. In-fact, it is necessary to bring on record truth in the matter and for that purpose it is necessary to allow the application. The learned Sessions Court has further made observations as quoted below.

“Learned Prosecutor, for the reasons best known to him, did not choose to do so.”

. This Court finds that these observations are unwanted, as the public prosecutor conducts prosecution to the best of his ability.

05. In this case it is clearly seen that the question of re-examination arose only in view of the cross-examination and therefore, there would be no propriety in making any comment on the public prosecutor. As this Court

finds merit in the petition, it deserves to be allowed by quashing and setting aside the impugned order passed by the learned Sessions Judge dated 25.04.2022 passed below Exh.127, in Sessions Case No.56 of 2019.

06. With these observations, the petition is allowed in terms of prayer clause “C”.

07. At this stage, learned Advocate for the respondent/accused submits that the respondent/accused is behind the bar since 2018 and requests this Court to direct the Trial Court to complete the Trial within stipulated period. She submits that now practically entire trial is over. In view of the same, the learned Trial Judge is requested to complete the Trial as early as possible and preferably within a period of two months from today.

[KISHORE C. SANT, J.]