

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1159 OF 2023

Ashok Mariba Kamble

Petitioner

Versus

The State of Maharashtra

Respondent

Mr. R. P. Adgaonkar, Advocate for the petitioner
Mr. S. P. Sonpawale, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 6th SEPTEMBER, 2023.

PER COURT :

1. This petition takes exception to the order dated 11th July, 2023, passed below Exhibit 62 in Special Case No. 27/2014.

2. Petitioner is an accused facing charge for the offence punishable under Sections 7 and 13 of Prevention of Corruption Act. Application Exhibit 62 was filed by him with submission that during the cross-examination of panch witness, document of departmental inquiry was referred to him. Since the statement shown to him in the cross-examination was not accepted by the witness, an attempt was made by the petitioner to seek certified copy of the departmental inquiry conducted by the office of Labour Commissioner, Mumbai.

Since the said request was denied, application Exhibit 62 was filed for issuing summons for production of proceeding of departmental inquiry conducted against him.

3. The said application was opposed by the prosecution with submission that the departmental inquiry is completely on different aspects and hence the said proceeding is not related with the present case.

4. Trial Court passed order rejecting the application by observing that the object of departmental inquiry and the criminal prosecution is different. The standard of proof required in departmental inquiry is based upon the principle of preponderance of probabilities and in the criminal prosecution, evidence is required beyond doubt.

5. There cannot be any dispute about the said preposition expressed by the learned Trial Court in the impugned order. However, it is premature to make such observation. More particularly in view of the fact that the learned Trial Court has permitted defence to ask questions to the panch witness with regard to his statement recorded

in the departmental inquiry. Permission granted by the Trial Court to ask such questions indicates that the questions were relevant for decision of the case. The witness was shown his statement before the Enquiry Officer. He denied such statement. In such circumstances, it is within right of defence to call for the document of enquiry proceeding conducted against accused to confront the same to the witness. The accused seems to have made attempts to get certified copy from the office of Labour Commissioner, Mumbai. However, he was denied the said copy. In such circumstances, petitioner was absolutely justified in making an application for issuing summons to the concerned authority to produce proceedings of departmental inquiry before the Court. At this stage, it was not necessary for the Trial Court to go into the issue as to the nature of evidence required in departmental inquiry and criminal trial. The only issue at the said stage, was whether the document called upon to be produced is relevant for decision of case. Permission to ask question in connection with the statement recorded by the witness during departmental inquiry shows that it is relevant. Hence, it was just and necessary to issue summons for production of the said document. Ultimately, opportunity of defence to contradict evidence of witness, on the basis of previous statement can not be denied.

6. In view of above discussion, impugned order cannot sustain. In the result, petition is allowed. Impugned order is set aside. Application Exhibit 62 stands allowed. Trial Court to issue witness summons to the concerned authority for the purpose of production of document pertaining to the departmental inquiry conducted against the accused.

(R. M. JOSHI)
Judge

dyb