

Kanchibhotla Saikumar s/o Late .. Petitioner
Kanchibhotla Venkatrama Dikshitulu
Versus
CBI EOW, Mumbai and anr .. Respondents
...

CORAM: BHARATI DANGRE, J.
DATED : 26th APRIL 2023

1 By the present petition, the petitioner/accused no.9
call in question two orders dated 20/12/2022, passed by Special
CBI. Judge, Pune below Exhibit-954 in Special case no.
60/2013, when he refused to recall the No-cross order passed on
17/2/2022 and declined the cross-examination of witness no.13.

2 Heard the learned counsel for the petitioner and Mr.
Venegavkar, appearing for the respondent and perused the order
passed below Exhibit- 954 and also the No-cross order dated
17/2/2022.

The sequence of events would reveal that the evidence of PW 13 commenced in the Sessions case on 07/01/2020 and it continued till 17/02/2022. It is disclosed that the evidence of the said witness runs into 152 pages.

3 After the examination in chief of PW 13, he was cross-examined by the counsel and as far as the accused no.9 is concerned, since his advocate was not present in the court on account of his ill health, he could not be cross-examined. As a consequence, the 'No-cross' order was passed on 17/2/2022. Thereafter, an application was filed for recalling of the said order, which was accompanied by the medical certificate of the advocate for the accused for the relevant date i.e. 17/2/2022.

The learned Judge record that after examination of PW-13, three to four witnesses are examined by the prosecution and even during that period of time, the No objection was raised. This reasoning appear to be incorrect, as it can be seen that the application was specifically moved by the petitioner for setting aside the No-cross order and in fact, from the impugned order, it is apparent that on the request of accused no.6, the 'No-cross order' was set aside and witness was permitted to be cross-examined.

4 No doubt, the learned Judge was under the pressure to conclude the evidence, as it can be seen that PW-13 was examined in chief for over a period of 2 years, but in any case, since expediting a trial or concluding the proceeding, do not

necessarily mean denial of fair opportunity to an accused person and in this case, particularly, when the counsel appearing for the petitioner/accused 9 had produced on record the medical certificate, I do not think that the Special Judge was justified in passing the impugned order dated 20/12/2022 and denying an opportunity to cross-examine.

5 In the wake of the aforesaid circumstances, the impugned order dated 20/12/2022 and the order dated 17/2/2022 are quashed and set aside.

The Special Judge shall, within a period of 4 weeks from today, issue summons to PW 13 and recall the said witness, who shall be permitted to be cross-examine at the instance of the petitioner. However, this must come with a cost of Rs. 10,000/- being imposed upon the petitioner. The cost shall be deposited with the Maharashtra Legal Services Authority, within a period of two weeks from today.

Writ Petition stand allowed in aforesaid terms.

(SMT. BHARATI DANGRE, J.)