

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1486 OF 2023

Suresh Mansing Jarad	...Petitioner
Versus	
The State Of Maharashtra	...Respondent

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Mr.Sumant Deshpande Advocate for Petitioner.

Mrs. Anamika Malhotra, APP for the Respondent – State.

Ms. P. N. Dabholkar, APP for the Respondent – State.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th JUNE 2023.

P.C.:-

1. Leave to amend to add prayer clause. Amendment be carried out forthwith.
2. Petitioner is facing prosecution vide Special ACB Case No.50 of 2015 pending on the file of learned Additional Sessions Judge, Baramati, District Pune. Petitioner is prosecuted for the offences u/s.7. 13(1)(d) r/w 13(2) of Prevention of Corruption Act. Trial had commenced. The complainant was examined. The examination in chief of the complainant (PW-1) was recorded on 7th November 2022 and subsequently on 27th January 2023. When examination in chief was over, advocate representing petitioner was not present as he was ill. Junior advocate represented him. The order

dated 27th January 2023 was passed by Additional Sessions Judge, Baramati observing that Advocate for the accused is absent and Advocate Deepak Khomane is present on his behalf. He declined to cross examine. Hence “No cross” recorded.

3. Application for recalling PW-1 for conducting cross examination of said witness was preferred before Trial Court on 23rd February 2023 stating that prosecution had examined PW-1 on 27th January 2023 and at that time advocate for accused was not present as he was ill. On that day examination in chief was completed and due to absence of advocate for accused no cross order was recorded. Considering the grievousness of the order it is necessary that legal representation should be done and cross examination must be done otherwise it would cause prejudice to the accused and recalling of said witness would not cause any prejudice to the prosecution. Therefore it was humbly prayed that PW-1 (complainant) may be recalled. Learned Additional Sessions Judge vide order dated 23rd February 2023 rejected the said application. It was observed that record shows that witness was present on warrant and his examination in chief was completed. No application for adjournment was filed nor any adjournment was sought but learned counsel declined to cross examine the witness. The reason that in the absence of counsel cross examination is not recorded is devoid of any merit. Considering that the matter is old and for want of sufficient reason application is rejected.

4. Apparently examination in chief of complainant (PW-1) was over on 27th January 2023. Advocate representing petitioner was absent. Junior advocate representing him was present in Court and obviously he could not conduct cross examination. Learned Trial Court passed an order of no cross. It appears that application for adjournment was not preferred by advocate representing petitioner. However, subsequently application was preferred on behalf of petitioner for recalling PW-1 which has been rejected. It is pertinent to note that petitioner is facing prosecution under P.C.Act. Complainant is vital witness. Only on the ground that advocate for petitioner was absent on 27th January 2023, petitioner cannot be deprived of the cross examination of complainant. Grave prejudice will be caused to the petitioner in the event complainant is not cross examined. In the interest of justice and considering the principle of fair trial it would be necessary to allow the petitioner's advocate to conduct cross examination of PW-1. In the circumstances order of no cross as well as order rejecting the application for recall of witness, are required to be set aside by allowing petitioner's advocate to conduct cross examination of PW-1.

ORDER

- (i) Writ Petition No.1486 of 2023 is allowed and disposed off;
- (ii) The order dated 27th January 2023 passed by Additional Sessions Judge, Baramati directing No Cross as well as order dated 23rd February 2023 passed by Additional Sessions Judge, Baramati rejecting application

Exhibit-16 for recalling PW-1 for the purpose of cross-examination, are quashed and set aside;

(iii) PW-1 is directed to be recalled and permitted to be cross-examined by advocate for petitioner.

(PRAKASH D. NAIK, J.)

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