

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1967 OF 2023

Rajiv Karshan Das Bhatia And Anr. ...Petitioners

Versus

The State Of Maharashtra ...Respondent

....

Mr. M. J. Upadhyay, Advocate for Petitioner.

Mr. Y.Y. Dabake, APP for the Respondent-State.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 12th JULY, 2023.

PC:-

1. The Applicant has challenged order dated 3rd April, 2023 passed by learned Special Judge, under the Prevention of Corruption Act and City Sessions Court for Greater Bombay at Mumbai in ACB Special Case No.78 of 2013 below Exhibit-36.

2. The Petitioner was tried for the offences under the Prevention of Corruption Act vide ACB Special Case No.91 of 2001. The said case had resulted in acquittal vide Judgment and order dated 9th June, 2008. The acquittal was primarily based on the fact that the sanctioning authority was not competent or the sanctioned order was invalid. Subsequently, fresh sanction was obtained by the prosecuting agency and thereafter supplementary charge-sheet was filed before the Special Court and the Petitioner was sought to be retried.

3. The prosecution preferred application viz. Exh.36 to treat the earlier evidence recorded in the earlier trial which has resulted in acquittal. The learned Sessions Judge vide order dated 3rd April, 2023 allowed the application Exh.36 and the prayer of prosecution to treat the evidence already recorded in the instant ACB case registered on the basis of supplementary charge-sheet as it is and if prosecution choose to examine the sanctioning authority in that case, Accused would have right to cross-examine him.

4. Learned Advocate for the Petitioner submit that the order dated 3rd April, 2023 be set aside and in the event the said order is confirmed, the Petitioner may be permitted to recall PW-1 and PW-2 for further cross-examination of those witnesses in view of the order dated 3rd April, 2023 and fresh trial for prosecuting the Petitioner. He submitted that while opposing the application Exh.36 Petitioner had filed reply and contended that several documents which were part of charge-sheet remain untouched in cross-examination conducted at the earlier point of time. It is submitted that in the aforesaid circumstances, the Petitioner may be permitted to further cross-examine to PW-1 and PW-2.

5. Learned APP submitted that the case is restricted to sanction order and therefore the Court has protected the right of the Petitioner by permitting him to cross-examine the sanctioning authority. However, the submission of learned counsel for the Petitioner and the fact that earlier

evidence is treated to be evidence in the present case wherein the Petitioner is being retried after the acquittal in the first case. The prayer for recall of PW-1 and PW-2 for further cross-examination by the Petitioner deserves to be allowed. In this circumstances, I pass the following order ;

ORDER

- i. Criminal Writ Petition No.1967 of 2023 is allowed;
- ii. The order dated 3rd April, 2023 passed by learned Special Judge, under the Prevention of Corruption Act and City Sessions Court for Greater Bombay at Mumbai is confirmed. Subject to modification that the Petitioner may be allowed to recall PW-1 and PW-2 who were examined in the previous case which has resulted in acquittal for further cross-examination.
- iii. Considering the fact that the Petitioner was earlier tried and the case had resulted in acquittal, this trial is expedited.
- iv. Petition stands disposed off.

(PRAKASH D. NAIK, J.)