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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.290 OF 2022

Aurangzeb @ Salim Maqbool Sheikh .. Applicant

v/s.

State of Maharashtra & Anr. .. Respondents

....

Ms. Sahana Manjesh, for the Applicant.

Ms. Anamika Malhotra, APP, for State.

....

CORAM: R.G. AVACHAT, J.

DATE : 1 FEBRUARY 2023.

P.C:-

Heard.

2. The challenge in this application is to the order refusing learned Advocate for the Applicant to confront the victim with her previous police statements, recorded under Section 161 Cr.P.C., with a view to bring on record omission/contradiction in the evidence of the victim/prosecutrix.

3. According to learned Advocate for the Applicant, it was a consensual relationship. The victim gave three different statements, two recorded under Section 161 Cr.P.C., one recorded under Section

164 Cr.P.C. According to her, the victim's first statement, recorded under Section 161 Cr.P.C., is dated 19 April 2017. Her supplementary statement was recorded on 10 May 2017, i.e. twenty-one days after her first statement.

4. The learned Judge of the trial court has observed, thus:

“Learned Advocate for accused at this stage is asking omission of a particular statement dated 19.04.2017 but those contents are present in the supplementary statement recorded by police on 10.05.2017. Under such circumstances, if such omissions are taken on record, then there will be misinterpretation before this Court of not disclosing a particular fact before police and it causes injustice to prosecution. If such omission is taken on record, then it will presume that such omission is not stated at all before police which was not correct. Therefore, as per my view that is not omission at all. Therefore, the learned Advocate for accused cannot be allowed to ask such omission to the witness, hence all the questions are about omission of statement dated 19.04.2017 does not stand legal and correct. Hence, the questions are disallowed.”

5. Learned APP supports the order impugned herein.

6. Section 155 of the Evidence Act speaks of impeaching credit of witness. The Section reads, thus:-

“155. Impeaching credit of witness. —

The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him: —

.....

- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
.....”

7. While Section 145 of the Evidence Act speaks about cross-examination as to previous statement in writing. The Section reads, thus :

“145. Cross-examination as to previous statements in writing — A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

8. Admittedly, the victim’s statement under Section 161 Cr.P.C. was first recorded on 19 April 2017. According to learned Advocate for the Applicant, there were certain omissions in the victim’s said statement. She was, therefore, being cross-examined in relation thereto. It is true that the victim’s further statement has been recorded on 10 May 2017. Learned Advocate for the Applicant has

reason to contend that the victim, in her supplementary statement, might have improved her version. When the statement of the victim dated 19 April 2017 is her previous statement, and the Applicant/accused proposes to bring on record certain omissions appearing therein, the learned Judge ought to have allowed learned Advocate for the Applicant to put all those questions. Answers that would be given by the victim is a matter of evidence to be appreciated at the conclusion of the trial. The order of the learned Judge disallowing learned Advocate for the Applicant to put the victim questions, so as to bring on record omissions in her statement dated 19 April 2017 is, therefore, set aside. The learned Judge is directed to allow learned Advocate for the Applicant to put all such questions, which he proposes to bring on record omissions in the statement of the victim dated 19 April 2017.

9. With this, the revision application is allowed in terms of prayer clause (a) and (e).

(R.G. AVACHAT, J.)