

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.746 OF 2023

Anita Sanjay Savale

...Applicant

Versus

The State of Maharashtra & Anr

...Respondents

Mr. Satyavrat Joshi, i/b Shubham P. Mhatre, Advocate for Applicant.

Mr. S.H. Yadav, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st AUGUST 2023

PC :

1. Heard learned Counsel Mr. Satyavrat Joshi, for the Applicant and learned APP Mr. Yadav for the Respondent No.1.

2. The Petitioner, who is the original Accused, has challenged the order dated 20th February 2023 passed by the Sessions Judge, Pune below Exhibit 178 in Sessions Case No.333 of 2016. This was an Application filed by the first Informant through his Advocate. The first Informant's Application was supported during the arguments by the learned APP. The said Application was for recalling the first Informant under Section 311 of Criminal Procedure Code (for short "Cr.PC.") though he was

already examined during trial as PW-1.

3. The issue involved in filing of this Application was in respect of the disputed handwriting of a chit found during investigation. It is the prosecution case that the said chit contains the confession of the Accused. The specimen handwriting of the Accused was collected. Her purported natural handwriting found in two notebooks and the specimen handwriting were sent to the handwriting expert for his opinion with reference to the chit, i.e., the questioned document. The handwriting expert's report was brought on record showing that the specimen handwriting and the handwriting in the disputed document was one and the same. Similarly, the natural handwriting was also the same.

4. The matter proceeded. The recording of evidence was concluded. Accused filed written arguments. At this stage, this Application was preferred by the first Informant for his re-examination to clarify about the natural handwriting of the Accused. The notebooks which contained that handwriting are already exhibited at Exhibit 126 and 127. According to him, for

the explanation of that handwriting, the Informant being husband of the Accused, was a necessary witness.

5. This Application was allowed by the learned Judge. According to the Accused, the Application was made for filling the loopholes and it should not be allowed at this belated stage. The learned Judge considered these submissions and observed that the evidence of this witness appeared to be essential for the just decision of the case; and it was duty of the trial Court to consider the evidence and decide the case on merits. This exercise was essential to bring the truth before the Court. The Accused was on bail and, therefore, spending some more time on the trial could not cause any prejudice to her. It was also observed that the Accused would get an opportunity to cross-examine the first Informant after his re-examination. It was also observed that oral arguments of the learned Advocate for the Accused were yet to commence.

6. Learned Counsel for the Petitioner Mr. Joshi submitted that the written arguments of the Accused were already filed and

the Accused had disclosed her defence. Therefore, at this belated stage, permitting this Application would amount to filing up the lacuna in the prosecution case. It would cause serious prejudice to the Accused. He relied on the judgment of a single Judge Bench of this Court in the case of **Nayna Rajan Guhagarkar vs. State of Maharashtra** as reported in 2021 SCC OnLine Bom 1054.

7. Learned APP on the other hand submitted that, it was necessary to explain through a natural witness regarding the contents and the handwriting in those notebooks. The Petitioner was the Accused and the first Informant was her husband, therefore, he would be the best person to know her handwriting. He submitted that in the interest of justice the learned Judge has rightly allowed that Application and no interference in the impugned order is called for.

8. I have considered these submissions. While it is true that the Application is made at a belated stage, however, few factors are required to be taken into consideration. Those two notebooks are already on record. The handwriting from those

notebooks was already sent by way of natural handwriting as N-1 to N-19 for handwriting expert's opinion. The handwriting expert's opinion is on record. The expert is examined and cross-examined, therefore, the natural handwriting assumes importance. The prosecution wants to lead linking evidence to prove that those notebooks contained her natural handwriting and for that purpose, the first Informant is required to be examined. It is true that the prosecution was not careful enough to get this fact on record, when the first Informant was initially examined. However, the conduct of trial is not about counting mistakes of the parties but the purpose is to get the truth. The purported natural handwriting was already sent to the expert, therefore, the linking evidence is absolutely essential. If the purported natural handwriting was not taken from the notebooks then the prosecution will have to show the source of her purported natural handwriting. The reliance of learned Counsel on the judgment of Nayna Guhagarkar's case, is misplaced. The observations in that case was in respect of the facts of that case. It was a case under Prevention of Corruption Act, 1988 and the observation was made that Section 311 of Cr.P.C.

can not be used to filling up the lacuna in prosecution evidence. It was specifically observed that having regard to the peculiar facts of that case; the impugned order of issuing witness summons for recalling the Complainant and panch witness passed after arguments, was set aside. The judgment itself indicates that it was passed in the facts of that case.

9. In the present case, as discussed earlier, it is necessary for the prosecution to show that her natural handwriting was available in the notebooks. In that view of the matter, in the interest of justice, at this stage, when the trial is yet to be concluded, an opportunity can not be denied to the prosecution to lead this evidence. The Accused can also have full opportunity to cross-examine the first Informant if any incriminating material is brought on record by him.

10. Considering this discussion, I do not see any reason to interfere with the impugned order.

11. Accordingly, the Application is dismissed.

(SARANG V. KOTWAL, J.)