

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4053 OF 2022

Nikita Rajkumar Thadani] .. Petitioner

vs.

State of Maharashtra & Ors.] .. Respondents

WITH

WRIT PETITION NO.959 OF 2023

State of Maharashtra] .. Petitioner

vs.

Abhinay Santoshkumar Saani & Ors.] .. Respondents

Mr.Lokesh Zade for the Petitioner.

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

Mr.Chinmay Bhosale, for Respondent No.2.

Mr.Abhishek Arote i/b Satyam Nimbalkar, for Respondent Nos.3 and 5.

CORAM : BHARATI DANGRE, J

DATE : 14th March, 2023

P.C.

Writ Petition No.959/2023 is not on board. Upon mentioning it is taken on board at Sr. No.501.

1] The present Writ Petitions are filed, calling in question the order passed by the Additional Sessions Judge, Pune on 12.09.2022, on an Application moved by the prosecution to issue witness summons to the Magistrate who has recorded the statement of the victim girl under

Section 164 of the Cr.P.C., being exhibited as Exhibit 311 in Sessions Case No.1032/2016.

2] Casting a brief look into the events, would reveal that the Statement of the victim girl, came to be recorded by the learned JMFC in terms of the order dated 24.05.2016, passed by Chief Judicial Magistrate, upon an application preferred by the prosecution for recording her statement.

It was directed that upon recording of the statement, it shall be send in a sealed envelope to the concerned Court as provided under Section 164 of the Cr.P.C.

3] Accordingly, on 24.05.2016 the statement of the victim girl was recorded. She also signed the statement, but the seal of the Magistrate Court was not affixed, nor did the Magistrate sign on the statement, as well as certificate certifying that the statement was recorded as per say of the victim girl.

4] Pursuant to this, when PW 9- victim girl stepped into witness box, when objection was taken for exhibiting the said statement, as it was without the signature and seal of the Magistrate.

Despite this objection, the Sessions Court clearly recorded that the witness i.e. PW 9 has identified her signature on the said statement and had deposed before the Court that it was recorded as per her say and in such circumstances, the Court considered it fit to exhibit the same as Exhibit 261.

This act on the part of Sessions Court was questioned before this Court in Writ Petition and this Court on 24.03.2022 recorded that, prima-facie it appears that PW 9 has not identified her signature on her

164 statement when she was confronted with the same by the prosecution.

Apart from this, the Court recorded that in any case 164 statement could not have been exhibited and therefore it was directed to be de-exhibited with liberty being given to the prosecution to examine the Magistrate, if they so desire.

5] Accordingly, the prosecution moved an application before the Additional Sessions Judge, Pune, who was seized of the Sessions Case in the backdrop of the facts which were culled out in the order passed by the High Court with liberty being conferred on the prosecution to examine the Magistrate.

This Application, however, was rejected by the Court on 12.09.2022 by recording that the prosecution wants to exhibit the Statement recorded under Section 164 through the Magistrate, but the Statement is not signed by the Magistrate and it is typed only and therefore, it cannot be identified and exhibited and its contents cannot be proved. The Court opined that no useful purpose would be served by examining the Magistrate and hence the Application was rejected.

This order is challenged by the victim as well as the State by two distinct Petitions, which are placed before me.

6] On perusal of sequence of events and on going through the statement of victim girl recorded under Section 164 of the Cr.P.C. in terms of the directions of the Chief Judicial Magistrate, immediately after the incident occurred on 27.02.2016, statement being recorded on 24.05.2016, will have its impact on the case of the prosecution and that is why the victim was insisting that the statement should be exhibited.

Admittedly, statement recorded under Section 164 of the Cr.P.C.

need not be exhibited and even the parties are entitled to the copies of the said statement only after cognizance of the offence is taken.

7] However, it cannot be said that the prosecution and victim are not justified in calling the Magistrate in the witness box, in lieu of the liberty conferred by the High Court and I see no harm in permitting so and trying to analyse the effect of the statement as is attempted to be done in the impugned order, cannot be a ground for rejection of the said request. Whether by bringing the Magistrate in the witness box, the statement under Section 164 of the Cr.P.C. as contemplated, would be proved or whether its contents could be said to be proved, is ultimately the matter of deliberation by the Court, upon the respective arguments being advanced before it.

However, the flimsy ground, which has been assigned in the impugned order for rejecting the request, cannot be sustained.

In any case, it can be seen that the trial has now progressed and examination of 27 witnesses is over, but trial is yet to be concluded. Pertinent to note that from 22.11.2022, on account of this Court staying the trial, the same is stand still.

8] In these circumstances, by setting aside the impugned order, I deem it appropriate to grant application by the prosecution by which it requested the Magistrate to be examined as its witness, subject to the stipulation that it shall be done in a time-bound manner and also that the accused persons will be at liberty to cross-examine the said witness.

Since the trial is already expedited at the instance of this Court, I deem it appropriate to pass the following order :-

ORDER

a] Writ Petitions are allowed.

b] The Additional Sessions Judge, Pune, who is conducting Sessions Case No.1032/2016 shall issue summons to the concerned Magistrate, making it returnable within the time bound period, not beyond a period of 2 weeks from the date of this order.

c] On the said date, on which the summons is made returnable, the Magistrate shall appear before the Court, and shall be examined and shall also be subjected to cross-examination.

d] This entire process shall be conducted as a continuous process and shall be concluded within a period of four weeks.

e] After considering the evidence of the said Magistrate, if no further witnesses are to be examined, the Court shall proceed with the trial and thereafter within a period of three months deliver its Judgment.

The learned APP shall communicate this order to the trial Court, apart from writ being sent.

Writ Petition No.4053/2022 and 959/2023 are made absolute, in above terms.

[BHARATI DANGRE, J]