

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.773 OF 2019

1. Dr. Mrs. Rajeshree w/o Rambahadur ... **APPLICANT**
Yadav, Prop. Of Nulife Clinic,
Aged about 47 years,
Occupation : Doctor, R/o
Brijmohan Niwas, Samadhan Nagar,
Behind Police Line Takli,
Nagpur- 440013 **(Original respondent/accused)**

// VERSUS //

1. Chandravilas ... **NON-APPLICANT**
s/o Chandrashekhar,
Handa, aged about 59 years,
Occupation: Business,
R/o Plot No.78, Mahesh
Colony, Chandannagar,
Nagpur **(Original Respondent/
Complainant)**

Shri R.M. Bhangde, Advocate for the applicant.
Shri J.M. Gandhi, Advocate for the respondent.

CORAM : G. A. SANAP, J.
DATE:- 07/02/2023

ORAL JUDGMENT

1. Heard Shri R.M. Bhangde, learned advocate for applicant and Shri J.M. Gandhi, learned Advocate for the non-applicant. Perused the record and proceedings.

2. In this application, the challenge is to the order dated 15.03.2019 passed by learned District Judge-11 and Additional Sessions Judge, Nagpur whereby the learned Judge was pleased to reject the application at Exh. 49 made by petitioner for leading the additional evidence. The application was primarily rejected on the ground that this accused did not make grievance that the opportunity was not granted to her to lead the evidence or to effectively cross examine the complainant.

3. In the application, the main ground putforth for leading additional evidence has been set out in paragraph No.4 of the application. It was stated that the production of the certified copy of the plaint in a suit filed by the complainant for recovery of the amount was necessary. It was also stated that the complainant would be required to

be confronted with the statement made in the plaint more particularly set out in paragraph No.4 of the application. It was stated that statement of the complainant in the complaint and in the plaint is self contradictory.

4. The relevant statement which is necessary for deciding this application is as follows:-

“As stated earlier in the 138 complaint the respondent/original complainant has stated that he has given Rs.7,50,000/- to the appellant in cash but in the civil suit the respondent/original complainant has failed to mention the mode of payment in the entire plaint and he has stated that he had given the said amount to the appellant/accused and her husband.”

5. Learned Advocate for the applicant submitted that the judgment in the criminal case was passed on 18.03.2010 by the learned Judicial Magistrate First Class, Nagpur whereas the plaint in Civil Suit filed on 24.02.2010 was served after 17.03.2010. Learned Advocate therefore, submitted that the basic observations made by the learned Judge while rejecting the application touching the aspects of non denial of an opportunity to cross examine the

complainant is not supported by the record. Learned Advocate further submitted that this is a fit case to grant an opportunity to the accused to cross examine the complainant and to confront him with the statement reproduced above and prove the contradictions.

6. Learned Advocate for the complainant-non applicant submitted that his client is ready to place before the learned Additional Sessions Judge in the appeal the certified copy of the plaint. The learned Advocate further submitted that there is no contradictions as put forth. The learned Advocate further submitted that if this Court is inclined to grant permission for leading additional evidence, it shall be confined only to the said statement and not more than that. The learned Advocate further submitted that if such an opportunity is granted then considering the contradictions sought to be brought on record, the number of questions may be limited.

7. On going through the record, I am satisfied that

for the purpose of avoiding the delay and to give the finality to the case of the complainant/non-applicant, grant an opportunity may not cause prejudice to the complainant/non applicant. The copy of the plaint was not available with the accused when the complainant was cross examined. In my view the dates of the proceedings mentioned here-in-above would show that on the date of the decision of the complaint, the plaint was not served upon the accused. The accused, therefore, had no benefit of knowing the contents of the plaint. In my opinion, therefore, in order to meet the ends of justice and to avoid further delay in the decision of the appeal, it would be just and proper to grant the permission for leading additional evidence as prayed for.

8. Accordingly, the application is allowed. The impugned order dated 15.03.2019 passed by learned District Judge-11 and Additional Sessions Judge, Nagpur at Exh.49 is quashed and set aside. The application for leading additional evidence is allowed on following conditions:-

(i) The appellant/accused is allowed to produce on record the certified copy of the plaint in Special Civil Suit No.211/2015.

(ii) On production of the certified copy of the plaint, the accused/appellant is granted an opportunity to cross examine the complainant for the purpose of confronting the complainant with the above reproduced statement only.

(iii) Considering the above statement, the cross examination shall be limited to the purpose of proof of contradictions. In any case, for undertaking this exercise the number of questions shall not be more than 10.

(iv) Learned Additional Sessions Judge, in order to save the time may record the additional evidence himself.

9. The learned Advocate for the parties submit that the parties will attend the Court of Additional Sessions Judge where the appeal is pending on 14.02.2023. Learned Additional Sessions Judge shall complete the recording of cross-examination on that date only.

10. Criminal Application stands disposed of in above terms.

JUDGE

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