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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.60 OF 2024

Kavita Ganesh Jadhav

PETITIONER

VERSUS

The State of Maharashtra

RESPONDENT

.....
Mr. D. S. Mutalik h/f Mr. U. S. Malte, Advocate for petitioner
Mr. N. B. Patil, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th FEBRUARY, 2024

ORDER :

1. Petitioner is original accused No.2 in Sessions Case No. 209 of 2020, wherein two accused are charged for offence punishable under sections 3, 4, 5 and 6 of Immoral Traffic Act read with 65E of the Maharashtra Prohibition Act.
2. During the course of recording of evidence of witnesses, prosecution filed application Exhibit-344 under section 311 of the Criminal Procedure Code on 24th April, 2022 for calling witness No.14 – Dr. Kode for examination. Neither his statement was recorded during investigation nor his name was mentioned in the list of witnesses. Trial Court allowed application Exhibit-344 on 28th April, 2022 and issued summons to PW-14. On 4th

November, 2023, PW-14 was examined in the Trial Court. Petitioner / accused No.2, filed application for adjournment on the ground that her advocate is unable to attend the court and cross-examine the witness. Trial Court rejected the said application and passed "no cross" order.

3. Thereafter, application Exhibit-466 was filed by petitioner / accused No.2 on 24th November, 2023 praying for setting aside "no cross" order and for recalling witness No.14 for cross-examination. This application is rejected by Trial Court, by the impugned order dated 7th December, 2023.

4. Heard learned advocate for petitioner and the learned APP for the State. Perused the memo of writ petition, annexures and the impugned order.

5. It is a matter of record that by order dated 28th April, 2022 Trial Court summoned PW-14 to remain present for recording his evidence, however, he did not remain present. Thereafter, from time to time, summons were issued to said witness, but he failed to remain present before the Trial Court. On 13th September, 2023, though PW-14 appeared through VC, however, due to network issue, he could not be examined. Thereafter, the matter was fixed on 7th October, 2023 and 21st October, 2023 for

recording evidence of PW-14, however, on those dates also PW-14 was absent. On 4th November, 2023, PW-14 was examined in the Trial Court. Considering these aspects, the Trial Court ought to have granted adjournment to petitioner / accused No.2. The adjournment was sought on the ground that advocate of petitioner / accused No.2 was unable to attend the Court and cross-examine the witness on that date. By denying adjournment and passing "no cross" order, Trial Court has denied a valuable right of cross-examination to petitioner / accused No.2. The approach of the Trial Court is contrary to the right of fair opportunity and fair trial.

6. Merely because the matter is made time bound, the valuable right of cross-examination and fair opportunity to defend the matter cannot be denied to accused. Record indicates that from time to time, advocate for petitioner / accused No.2 has diligently conducted the matter and PW-14 has failed to remain present before the Trial Court on some of the dates. The impugned order, therefore, cannot be sustained, as it denies fair trial to petitioner. In the result, following order:

ORDER

A. Criminal Writ Petition is allowed.

- B. Impugned order dated 7th December, 2023 passed by learned Sessions Court, Aurangabad below Exhibit-466 in Sessions Case No.209 of 2020 is quashed and set aside.
- C. Application Exhibit-466 is allowed.
- D. Trial Court shall recall PW-14 Dr. Kode on 15th February, 2024 and permit the learned advocate for petitioner – accused No.2 to conduct his cross examination.
- E. Petitioner / accused No.2 shall pay Witness Bhatta of PW-14.

[NITIN B. SURYAWANSHI]
JUDGE