



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 202 OF 2020
IN
CRIMINAL APPEAL NO. 1135 OF 2019

Smt. Snehal Sudhakar Vispute
Age : 35 years, Occ : Service,
R/o Yashoda Nagar, Mehar Dham,
Peth Road, Nashik,
Dist. Nashik.

... Applicant/Appellant
[Orig. Accused No.1]

Versus

The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.

... Respondent

.....
Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Mr. Vishal Chavan
i/by Mr. Devang R. Deshmukh, Advocate for the Applicant.
Mr. N. D. Batule, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 29.07.2024

Pronounced on : 23.08.2024

ORDER :

1. Learned senior counsel pointed out that applicant/appellant is a lady who is still officiating as a Chief Officer, Municipal Council. He also pointed out that due to local political rivalry, she has been implicated at the instance of the then President against whom actions were initiated. That, false complaint of commission of offence under the PC Act was lodged and applicant was tried and held guilty vide

Special (ACB) Case No. 4 of 2014 by judgment and order dated 18.10.2019. It is emphasized that said judgment and order of conviction has been taken exception to by filing Criminal Appeal No. 1135 of 2019.

2. In the above background, learned senior counsel pointed out that while trial was in progress, applicant was facing personal issues due to strained relations with husband. That, due to matrimonial discord, distinct proceedings under appropriate Acts were contested. According to learned senior counsel, to add to her adverse condition, she was unfortunately diagnosed of ailment like cancer. That, faced with such difficult times, she was not in a position to defend her case properly in trial court. That, there are documents which clearly suggest that she has been made a scapegoat and is a victim of circumstances. Because of above quoted adverse circumstances, she could not produce some documentary evidence which is very crucial. Therefore, her defence was not effectively put up. However, learned senior counsel submits that, now appeal has been preferred and therefore, he points out that, by exercising powers under Section 391 of Cr.P.C., this appellate court can allow such documents to be taken on record so as to give applicant a fair opportunity to effectively contest the appeal. He pointed out that provision of Section 391

Cr.P.C. empowers appellate court to permit additional evidence in the interest of fair opportunity and trial and to unearth the truth. Resultantly, here, following prayers are raised in the instant application :

- “A) Grant this Interim Application and allow the applicant to submit the documents at Exhibit ‘P-I’ to ‘P-X’ as additional evidence in the above mentioned Criminal Appeal and direct the learned Trial Court to record the the evidence in respect of the above documents and submit report this Hon’ble Court and/or remand the matter for fresh trial and for that purpose issue necessary orders:
- B) Pass such other further order as this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the case.”

3. Above application has been strongly opposed by learned APP by pointing out that it is an attempt to fill up the lacuna. According to learned APP, though the documents were available with applicant, she did not adduce any evidence in trial court and therefore, she cannot be allowed to adduce such evidence in the appellate court. That, according to learned APP, though Section 391 Cr.P.C. permits adducing additional evidence in appeal, only in exceptional circumstances such permission can be granted and when case to that extent is being made out.

4. Instant application is in above appeal in which the judgment and order passed by learned Additional Sessions Judge, Jalgaon has been taken exception to. Said judgment and order of the trial court is of 18.10.2019 and in the same year appeal seems to have been filed. Instant application *ex facie* seems to be filed in 2020.

5. Before ascertaining the entitlement of applicant to adduce additional evidence in appellate court, it would be desirable to reproduce the provision of Section 391 Cr.P.C., which is as under:

391. Appellate Court may take further evidence or direct it to be taken.-

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Sessions or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

6. The fundamental grounds raised for taking additional evidence are spelt out in para 14 onwards. The sum and substance of the case put forth for taking additional evidence on record is that, applicant was facing matrimonial proceedings in the court of Civil Judge, Senior Division which were instituted by her husband under Section 13(b) of the Hindu Marriage Act. Secondly, she was also diagnosed of cancer chronic myeloid leukemia (CML) in October 2017. Due to such adverse circumstances faced at that time, she was unable to produce documents which are part of public record i.e., communication made to the Collector, copy of notices and office notings in the file of Municipal Council where she was posted, copy of the court proceedings in RCC No. 167/2012, copy of minutes of meeting while she was officiating, copies of notices issued by the Investigating Officer, report dated 31.10.2012 and also copy of evidence in departmental inquiry.

7. It is true that law is fairly settled that only in exceptional circumstances, permission to adduce additional evidence at appellate stage can be granted. However, it is required to be satisfied that the party seeking production of additional evidence in appellate court was precluded from bringing such documents on record at relevant time and as to whether such documents are essential for just decision.

8. In the case of *Sukhjeet Singh v. State of Uttar Pradesh*, 2019 SCC OnLine SC 72 ; MANU/SC/0077/2019, decided on 24.01.2019, the Hon'ble Apex Court by referring to earlier judgments, made following observations *vis a vis* regarding the scope and powers under Section 391 Cr.P.C.:

“... it is clear that there are no fetters on the power under Section 391 Cr.P.C. of the Appellate Court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people.

... when it became necessary to take additional evidence, cannot be enlisted or enumerated in any fixed formula. It depended on facts of each and every case to come to a conclusion as to whether it is necessary to take additional evidence or not.

When Statute grants right to appeal to an accused, he had right to take all steps and take benefit of all powers of the Appellate Court in the ends of justice. In a criminal case Appellate Court had to consider as to whether conviction of Accused is sustainable or appellant had made out a case for acquittal. The endeavour of all Courts has to reach to truth and justice.”

9. Taking into account the availability of Section 391 Cr.P.C. and in the light of above judgment, this Court is only required to ascertain whether additional documents, which are now sought to be taken at appellate stage, would be essential to reach to the truth and justice.

10. Perused the documents which are sought to be taken on record. Learned senior counsel had laid much stress on the aspect that there was action initiated against the then President of the Municipal Council and there is official record suggesting applicant being targeted for not obliging such politically motivated persons. Thrust is on false implication to settle scores.

11. Admittedly, applicant, on conviction, has preferred appeal and the same is pending consideration. Claim put forth is that because of matrimonial discord and because of serious ailment, documents could

not be brought on record during trial itself. It is emerging from the documents that applicant's marriage was facing a rough weather as her husband had initiated proceedings under the Hindu Marriage Act. Coupled with this, there are also documents showing she being diagnosed of cancer. Taking the same into consideration, by allowing documents to be taken on record, no prejudice is likely to be caused to the other side, nor it would be an attempt to fill up lacuna, as the evidence put forth by prosecution in trial court is only to be re-appreciated. No new case is tried to be introduced. In the interest of fair opportunity and to meet ends of justice, application deserves to be allowed. Hence, I proceed to pass the following order:

ORDER

- I. The application is allowed.
- II. The trial court to record evidence as per procedure pertaining to the following documents:
 - a. Application dated 02.09.2010 given by applicant to the Collector, Jalgaon, notice dated 07.09.2010, letter dated 07.09.2010, report dated 21.03.2011 and order dated 02.04.2012 passed by the Collector, Jalgaon. (**Exhibit P-I** Collectively at pages 19 to 26 of the memo of application).
 - b. Notice dated 09.07.2012 along with letter dated 12.03.2012 and the notings made by the office of the Engineer of Bhadgaon Municipal Council and the reply dated 13.01.2015. (**Exhibit P-II** Collectively at pages 27 to 34 of the memo of application)

- c. R.C.C. No. 167 of 2012 registered against subsequent Chief Officer in respect of same property along with F.I.R. bearing C.R. No. 154/2012 and “B” Summary Report along with order passed by the learned Judicial Magistrate, First Class, Bhadgaon. (**Exhibit P-III** Collectively at pages 35 to 58 of the memo of application)
- d. Minutes of meeting dated 08.11.2011. (**Exhibit P-IV** at pages 59 to 60 of the memo of application)
- e. Notices dated 27.11.2010 and 07.12.2012 issued by the Police Officer. (**Exhibit P-V** Collectively at pages 61 and 62 of the memo of application)
- f. Report dated 31.10.2012. (**Exhibit P-IX** at pages 134 and 135 of the memo of application).
- g. Evidence dated 07.11.2017 of PW2 Ashik Mohd. Hanif Pinjari recorded in the Departmental Inquiry. (**Exhibit P-X** at page 136 to 138 of the memo of application).

III. The trial court, after recording evidence on the above documents as per law, shall certify same and send it back, along with documents, within a period of three (03) months from today, for consideration of this Court in appeal.

IV. The application is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]