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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.137 OF 2024

Yeshwant Bhujangrao Yadav

PETITIONER

VERSUS

The State of Maharashtra and Another

RESPONDENTS

.....
Mr. Kailas A. Kadam, Advocate for the petitioner
Mrs.P. V. Diggikar, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th APRIL, 2024

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, petitioner challenges order dated 19th October, 2023 passed by learned 2nd Judicial Magistrate First Class, Ambajogai, District - Beed, below Exhibit-66 in RCC No. 340 of 2015, thereby allowing application filed by prosecution under section 311 of the Criminal Procedure Code.

2. Petitioner is facing charge under section 351 (1) (a), 452, 323, 504, 506 of the Indian Penal Code. During trial, prosecution examined 5 witnesses. Thereafter, in spite of service of summons, Investigating Officer Mr. D. A. Nanekar, remained absent. Trial Court, by order dated 10th March, 2022 passed below Exhibit-1, closed evidence of prosecution, observing that

though Investigating Officer was served with summons, he remained absent and it appears that he is residing at Pune and as sufficient time is granted to the prosecution and the matter is 6 years old.

3. Prosecution filed application Exhibit-62 under section 311 of the Criminal Procedure Code contending that though summons was served on the Investigating Officer, he had undergone operation and rod is implanted in his leg, therefore, he could not remain present in the Court to give evidence. Now he is recovered and he was contacted and he is ready to give evidence. Hence, permit the prosecution to examine Investigating Officer. Petitioner opposed said application by relying on ***“Ratanlal V/s Pralhad Jat and Others” AIR 2017 SC 5006***, contending that application does not come within the purview of section 311 of the Criminal Procedure Code.

4. Report of service of summons indicates that Investigating Officer Mr. Nanekar was not found and, thereafter, prosecution evidence is closed by the Court. Thereafter statement of accused is recorded under section 313 of the Criminal Procedure Code on 31st March, 2022 and the matter is fixed for final hearing / arguments.

5. By order dated 3rd November, 2022, Trial Court rejected the

application observing that no medical papers of operation are placed on record, four years' time was given to Investigating Officer and the application is filed without proper documents, and the same is devoid of merits.

6. Prosecution thereafter filed application Exhibit-66, renewing its request for permission to examine Investigating Officer, by placing on record the medical documents of Investigating Officer. Said application (Exhibit-66), is allowed as a last chance, by order dated 19th October, 2023. Petitioner is aggrieved by this order.

7. Heard learned advocate for petitioner and perused the memo of petition, documents annexed therewith and the impugned order.

8. Learned advocate for petitioner submits that, impugned order is in fact review of the order passed by Trial Court below Exhibit-62. By examining Investigating Officer, prosecution is trying to fill up lacuna and the same will cause serious prejudice to the petitioner. Hence, the impugned order cannot be sustained.

9. Learned APP, on the other hand, supported impugned order.

10. There is no merit in the contention of petitioner that Trial Court has reviewed its order passed below Exhibit-62 while passing the impugned order. Application Exhibit-62 was rejected by the Trial Court on the ground that medical papers were not submitted and observing that prosecution was granted 4 years' time to record evidence of Investigating Officer.

11. Indisputably, prosecution has filed relevant medical documents in respect of operation of the Investigating Officer along with application Exhibit-66, which are rightly taken into consideration by the Trial Court, while allowing the said application. From the order passed below Exhibit-62, it cannot be said that application Exhibit-62 was rejected on merits.

12. Documents placed on record indicate that at the time of service of summons, Investigating Officer Mr. Nanekar was not found and thereafter prosecution evidence is closed by Trial Court. It is true that statement of accused is recorded under section 313 of the Criminal Procedure Code on 31st March, 2022 and thereafter matter was fixed for final hearing / arguments. Investigating Officer is material witness, who needs to be examined for just decision of the case. Prosecution is entitled to lead best possible evidence in support of its case and said opportunity cannot be denied. Trial Court has rightly allowed

application by invoking powers under section 311 of the Criminal Procedure Code. There is no substance in the contention of petitioner that prosecution is trying to fill up lacuna and serious prejudice will be caused to him if Investigating Officer is examined. Petitioner has right to cross-examine Investigating Officer and, therefore, no prejudice is likely to be caused to petitioner, if Investigating Officer is examined. Petitioner has failed to demonstrate that by examining Investigating Officer, prosecution is trying to fill up lacuna in its case. In the facts of the present case, non examination of Investigating Officer cannot be said to be lacuna in the prosecution case, since his evidence is necessary for just decision of the case. Trial Court is justified in allowing application Exhibit-66.

13. No case is made out by petitioner to interfere in the impugned order, in extraordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

**[NITIN B. SURYAWANSHI]
JUDGE**