



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 445 OF 2024

UDDHAV LAXMAN WAGH
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Chaitanya C. Deshpande, Advocate for the Petitioner
Mr. V. M. Jaware, APP for Respondent-State
Mr. I. K. Wagh, Advocate for the informant.

CORAM : Y. G. KHOBRAGADE, J.

Dated : 11th October, 2024

PER COURT :-

1. Leave to correct provisions of law in cause title is granted.
2. Rule. Rule made returnable forthwith. With consent of both the sides, it is heard finally at the stage of admission.
3. The Petitioner has challenged the order dated 31.10.2023, passed below Exh. 75 in Sessions Case No. 357 of 2021, whereby the learned Additional Court declined to set aside the order of "No cross" passed on 11.09.2023.
4. On face of record it appears that, the present

Petitioner is facing trial for the offences punishable under Sections 302, 323, 504, 506 read with section 34 of the Indian Penal Code on the basis of FIR lodged by the informant Babasaheb Ramrao Wagh. After framing the charges, the prosecution examined witnesses. On 14.08.2023, PW-6 Ramesh Govardhan Rathod entered into witness box and his examination-in-chief and partly cross examination was recorded, but the P.W. 6 was not feeling well, hence, cross examination was deferred till next date i.e. 28.08.2023, however, on that day adjournment was sought on behalf of the accused/Petitioner, which was granted subject to payment of cost and witness Bhatta. Thereafter, the matter was adjourned to 11.09.2023, however, again an application for adjournment was moved on behalf of the accused but said application came to be rejected and order of 'No Cross' came to be passed. Thereafter, on 09.10.2023, the present Petitioner/ Accused moved an Application Exh. 75 and prayed for recall of the order dated 11.09.2023 with permission to cross examine witness PW-6. On 31.10.2023, the learned Additional Sessions Judge passed the impugned order and

rejected Application Exh. 75 for setting aside " No cross' order dated 11.09.2023.

5. The learned counsel appearing for the Petitioner/accused canvass that due to bonafide reason, the Petitioner sought adjournment, which was refused and matter has been proceed further without cross examination of the PW-6. Therefore, the petitioner's right for cross-examination of witness denied and no proper opportunity granted to the accused, hence, serious prejudice would be caused to the Petitioner accused.

6. Per contra, the learned APP submits that, though the learned trial court granted sufficient opportunity to the accused to cross examine PW-6, however, on one or the other reason, the petitioner sought adjournment and failed to cross examine the witness and no bonafide reason assigned. Therefore, the impugned order is just and proper, hence, prayed for dismissal of the Petition.

7. It is well settled principle of law that during the course of trial, sufficient opportunity needs to be granted to

cross examine the witness. In the case in hand, it appears that, on 14.08.2023, PW-6 entered into witness box and after his examination in chief over, the defence counsel conducted cross examination partly but the witness was not feeling well, therefore, cross-examination was deferred till 28.08.2023, on which date, the counsel for the Petitioner/accused sought adjournment, which was granted subject to cost and matter was adjourned to 11.09.2023. On 11.09.2023, the petitioner again filed application for adjournment but said application for adjournment came to be rejected and order of 'No Cross' came to be passed. Therefore, on 09.10.2023, the Petitioner/Accused moved Exh. 75 and prayed for recall of order dated 11.09.2023 and permission to cross examine witness PW-8. During the course of argument, the learned counsel for the Petitioner submitted that, the learned trial Court examined all the witnesses including Investigating Officer but till date no statement u/s 313 of Cri. P. C. is recorded. Therefore, taking into consideration principle of fair trial and proper opportunity to the Petitioner to defend charges, the petitioner/accused is permitted to conduct further cross

examination of the witness PW-6 and no prejudice would be caused to the prosecution. However, the petitioner/ accused played some tricks to delay the trial and did not cross examine the witness on the scheduled trial, hence, some delay caused while deciding the matter. Therefore, considering the nature of offence as well as principle of fair trial, it would be just and proper to permit the petitioner to cross examine the P. W. 6 subject to payment of cost of Rs.5,000/- to be paid to the informant, who is brother of the victim of the crime and subject to payment of cost of Rs. 2000/- with required Bhatta to the P. W. 6.

8. In view of the above, I am inclined to grant the present Petition and proceed to pass the following order:

O R D E R

- (1) The impugned order dated 31.10.2023 passed below Exh. 75 as well as order of "no cross" passed on 11.09.2023 by the learned Additional Court, Aurangabad in Sessions Case No. 357 of 2021 are hereby quashed and set aside subject to payment of cost of Rs.5,000/- to the informant and subject to payment of cost of Rs. 2000/- to the Witness PW-6 payable by the Petitioner or the Petitioner shall deposit the same before

the Trial Court before entering Witness PW-6 into the witness box.

- (2) The learned Trial court should examine PW-6 on the next date and shall not avoid to grant adjournment except emerging situation brought on the record.
- (3) In view of above, Rule is made absolute.

(Y. G. KHOBRAGADE, J.)

Chavan