



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1084 OF 2024

Nandkishor s/o Bapurao Chavan
Age: 49 yea.rs, Occ: Service
R/o: Durga Nagar, Near Mhasoba Temple
Sillod, Tq. Sillod Dist. Aurangabad .. Petitioner

Versus

The State of Maharashtra .. Respondent

Mr. Nilesh S. Ghanekar, Advocate for the Petitioner;
Mr. S.B. Narwade, A.P.P. for Respondent/State

CORAM : S. G. MEHARE, J.

DATE : 21-06-2024

PER COURT :-

1. Issue notice to the respondent. Learned A.P.P. waives service of notice for the respondent.
2. Heard the matter finally at the admission stage.
3. The petitioner has challenged the order passed by learned Additional Sessions Judge, Aurangabad, rejecting the application Exhibit-30 in Special Case (ACB) No.27 of 2019 dated 10.05.2024 for recalling P.W. No.1 for further cross-examination.
4. The petitioner had applied before the Special Court for setting aside "no cross order of P.W. No.1 and recall him for cross-examination" vide Exhibit-30.

5. The petitioner had applied for time to cross-examine the witness by application Exhibit-27 on 26.12.2023. The said application was rejected. Thereafter, application Exhibit-30 for setting aside no-cross examination and recalling the witness to cross-examine, was filed.

6. The learned Additional Sessions Judge, Aurangabad has rejected the application observing that on 26.12.2023, after the rejection of the adjournment application, learned counsel Mr. Tidke, holding for Mr. Ghanekar, Advocate was asked to convey him if he could cross examine the witness in the second half. However, he did not turn up till 4.00 p.m. Hence, impugned order of “no cross” was passed. The ground that he was not prepared for cross-examination has no substance and merit. The advocate appearing was well aware of the stage of the matter, and it is expected that the advocate should appear well-prepared before the Court. Therefore, the insistence on adjourning the matter on the grounds that he was not prepared was not justifiable. As such, no grounds are made out in this application for granting an opportunity to cross-examine the witness, as the opportunity was already granted, and the learned advocate has not availed that opportunity. Hence, the application was rejected.

7. Learned counsel for the petitioner submits that there was a

reference to the order dated 26.12.2023. He requested the Court that verification of the memory card is essential to make the proper defence. In that context, application Exhibit-30 was filed. Both applications should be read together. There was no deliberate delay in the trial. The witness to be recalled for cross-examination is material. It is a question of the interest of the accused. However, he is ready to compensate the witness to meet the ends of justice.

8. Learned A.P.P. has vehemently opposed the petition. He submits that the approach of the accused is very casual. He has no respect for the Court and the witnesses. There were two applications filed for adjournment. Exhibit-27 was rejected on 26.12.2023, in which adjournment was sought on the ground of verifying the memory card. Thereafter, application Exhibit-30 was filed. There seems to be a casual approach to drafting such an application. In such applications no grounds are made for granting an opportunity to cross-examine the witness to meet the ends of justice and protect the rights of the accused. There seems to be a casual approach. The facts remain that recalling the witness again and again is harassment of the witness who appears to give evidence in response to the Court summons. In such circumstances, the witness must be compensated.

9. In the exercise of discretion of the Court, the impugned order deserves to be quashed and set aside to make justice. Hence, the

order:-

ORDER

- i) Criminal Writ Petition is allowed.
- ii) The impugned order passed by learned Additional Sessions Judge, Aurangabad, rejecting the application Exhibit-30 in Special Case (ACB) No.27 of 2019, dated 10.05.2024, is quashed and set aside.
- iii) Application Exhibit-30 in Special Case (ACB) No.27 of 2019 is allowed.
- iv) Learned Additional Sessions Judge, Aurangabad should call the witness who has not been cross-examined by issuing summons subject to depositing costs of Rs.20,000/- (Rs. Twenty Thousand) as compensation to the witness well in advance with the Court of Additional Sessions Judge, Aurangabad, i.e. within a week from today.
- v) A witness summons should be issued after the cost is deposited, as directed above.
- vi) The compensation amount be paid to the witness who is recalled.
- vii) The accused shall complete cross-examination of the witness without unnecessary delay.

**(S. G. MEHARE)
JUDGE**

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