



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1406 OF 2024

RAM MANGILAL CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. S. S. Bora, Advocate for the Petitioner

Mr. V. M. Chate, APP for the Respondent – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 16.10.2024

PER COURT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. The Petitioner invoked the jurisdiction of this Court under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure and put forth prayer clause (b), which reads as under:-

“ (b) That the impugned Order dated 28.03.2024 passed below Exh.93 by the learned Special Judge and Additional Sessions Judge-1, Nanded in Special ACB Case No.22/2016, thereby rejecting the prayer of the petitioner for recalling PW.1 for cross examination by setting aside no cross order dated 03.09.2022, may kindly be quashed and set aside and Application below Exh.93 may kindly be allowed by setting aside no cross order and recalling PW.1 for cross examination.”

3. It is an admitted fact that the present Petitioner charge-sheeted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 on the basis of the complaint lodged by one Prakash Hausaji Gaikwad (PW1).

4. Needless to say that the learned trial Court recorded examination-in-chief of PW1 Prakash Hausaji Gaikwad, in part, on 20.08.2021, 20.09.2021, 19.01.2022 and lastly on 04.02.2022. The cross examination of PW1 was partly conducted on 04.02.2022, however, on that day, the defense Counsel had filed Exh.40 application and sought exemption from appearance of the accused, which was granted, but Exh.41, the application for adjournment, came to be rejected and matter was proceeded without cross examination on behalf of the Petitioner accused. The matter was posted on 12.04.2022. Again on 12.04.2022, the learned Counsel for the Petitioner moved an application Exh.52 for adjournment, but it was rejected on the ground that, the witness PW1 was recalled after setting aside the order dated 04.02.2022 passed below Exh.11. However, again an application for adjournment came to be filed. On

03.09.2022, the learned trial Court passed the order below Exh.18, which reads as under:-

“In view of Order dated 14/02/2022 passed below Exh..44, this witness has been recalled on the request of the accused after set aside the order dated 04/02/2022 passed below Exh.11 of no cross-examination.

Cross examination by Adv. Shri. C.M.Patki for the accused:- absent when called repeatedly- Adv. Shri. Ghorband holding for Adv. Shri. M. R. Sharma is present and has moved an application at Exh. 69 for seeking personal exemption of attendance of the accused, order passed below Exh.69 - personal attendance of the accused is exempted for the day on condition that his identity shall not be challenged nor any adjournment shall be sought in his absence by his Advocates- Adv. Shri. D. D. Ghorband is requested to proceed with the cross-examination of this witness - however, Adv. Shri. Ghorband has declined to cross-examine the witness - no cross-examination.”

5. Though the matter repeatedly called out, but the Counsel for the accused was remained absent and only application Exh.69 was moved seeking exemption from personal attendance of the accused/Petitioner. Therefore, on 26.03.2024, the Petitioner filed an application Exh.93 and prayed for recall of order dated 03.09.2022. On 28.03.2024, the learned trial Court passed the impugned order and rejected the application Exh.33 holding that, the present Petitioner/accused had preferred Criminal Writ Petition No.1559 of 2022 before this Court and had prayed for quashing of order dated

11.10.2022 passed below Exh.1 and while passing said order, this Court considered the order passed in deposition of PW3, wherein it has been held that the Petitioner accused and his Counsel did not proceed with cross examination and undertaking was furnished that the Petitioner / accused would remain present before the trial Court. But, neither the Petitioner nor his Counsel co-operated during the course of the trial. So also, the trial protracted, because of non cooperation on the part of the Petitioner. Therefore, rejected the said application.

6. It is well settled principle of law that during the course of trial, sufficient opportunity needs to be granted to the accused to attend charge and to cross examine the witness.

7. No doubt, in case in hand, on 04.02.2022, though the accused and PW1 was present, however, the learned judge was on leave. Therefore, evidence could not be recorded and the matter was posted on 12.04.2022, on which date the Petitioner / accused was remain absent. Therefore, an application Exh.51 for exemption was moved, which was granted. However, the learned Counsel for the Petitioner / accused moved Exh. 52 application for adjournment, which has come to be rejected on ground that, PW1 was called on the

request of the accused vide order dated 14.02.2022 passed below Exh.44. After setting aside, no cross order was passed on 04.02.2022 below Exh.51 and despite repeatedly adjournments have been sought. So also, the prosecution examined further witnesses.

8. The learned trial Court further considered the order passed by this Court in Criminal Writ Petition No.1559 of 2022 and rejected the application Exh.93. However, considering the concept of fair trial as well as to provide proper opportunity to the accused to defend the charge, it would be just and proper to permit the Petitioner / accused to cross examine the PW1. However, on the other hand, the Petitioner / accused and his Counsel played tactics to delay the trial, may be on one or other reason and time and again, sought adjournments. Not only this, but on many dates, the Petitioner / accused remained absent and sought exemption from personal appearance. Therefore, to meet the ends of justice, it would be just and proper to provide one more opportunity, subject to payment of heavy cost of Rs.15,000/-, payable by the Petitioner / accused to the PW1 informant Shri Prakash Hausaji Gaikwad.

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

ORDER

- (i) The impugned order dated 28.03.2024, passed below Exh.93, by the learned Special Judge and Additional Sessions Judge -1 Nanded, in Special ACP case No.22 of 2016 as well as the order dated 03.09.2022, passed below Exh.18, are hereby quashed and set aside.
- (ii) The Petitioner / accused is hereby permitted to cross examine PW1 Prakash Hausaji Gaikwad, subject to payment of cost of Rs.15,000/-, payable to PW1 on the day of appearance of PW1 for cross examination.
- (iii) The learned trial Court is hereby directed to issue witness summons to PW1 or the prosecution should keep present the PW1 for cross examination on behalf of the Petitioner / accused on 11.11.2024.
- (iv) It is made clear that no further adjournment would be granted on any count and the defense Counsel shall conduct the cross examination of PW1 on day to day basis.
- (v) Rule is made absolute in the above terms.

[Y. G. KHOBRAGADE, J.]

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