



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

CRIMINAL REVISION APPLICATION NO. 319 OF 2024

Prakash S/o Sudam Pandit
Age: 33 years, Occu.: Agriculture,
R/o. Pendhapur, Taluka : Gangapur,
Dist.Aurangabad.Applicant

Versus

State of MaharashtraRespondent

.....
Advocate for Applicant : Mr.Rahul Pralhadrao Mote
APP for Respondent : Mr.D.R.Korade
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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 10 DECEMBER, 2024
PRONOUNCED ON : 17 DECEMBER, 2024**

ORDER :

1. In instant revision, original accused facing trial for offence under Sections 302, 307, 326, 324, 143, 147, 148, 149, 504, 506 of the Indian Penal Code (IPC) has taken exception to order dated 03-12-2024 passed on exh.189 by learned District Judge-1, Vaijapur, who is seized with the trial of Sessions Case No.140 of 2023.

2. Following prayers are raised in revision application :

“B) The impugned order passed in Session Case No.140 of 2023 below Exh.189 dated 03-12-2024 thereby closing the cross examination of prosecution witness no.13 below Exh.184, passed by District Judge-1, Vaijapur, Dist.Aurangabad may kindly quashed and set aside.

C) That the order passed by learned District and Sessions Judge-1, Vaijapur in Sessions Case No.140 of 2023 dated 03-12-2024 below Exh.189 may kindly be stayed.”

3. It is put-forth that accused revisionist is facing above trial. That prosecution has examined as many as 13 witnesses. Now matter is posted for recording statement of accused under Section 313 of the Code of Criminal Procedure. Learned Counsel would submit that on 29-11-2024, PW13 Sitakant Gopal Palaskar, Assistant Chemical Analyzer, was examined by prosecution and after his examination-in-chief, learned Counsel representing accused proceeded to cross-examine said expert. It is pointed out that while cross-examination was in progress, more particularly, on the point of certain guidelines and protocol to be maintained while collecting and sealing samples for analysis, learned trial Court did not permit further questioning on guidelines and asked defence Counsel to file application to first seek permission to question witness i.e. on proposed questions put to the expert. Learned Counsel pointed out that instead of application sought by learned trial Court, purshis was placed, but it was not

accepted and thereby further directions were given to file affidavit. That accordingly, affidavit of accused, whom learned Counsel was representing, was filed. However learned trial Court proceeded to pass order of closure of cross-examination and even rejected application exh.189, which was tendered for setting aside cross-examination closing order.

4. Learned Counsel emphasized that cross-examination is a valuable right of defence. That his precious right to conduct cross-examination has been thwarted. That serious prejudice is caused to the accused by denial of cross-examination. That witness under cross-examination was an Chemical Analyzer. That due to order of learned trial Court, valuable right of accused has been prejudiced, which would have bearing on defence of accused. Hence, above prayers.

Learned Counsel, in support of above submissions, has sought reliance on the judgment of Hon'ble Apex Court in the case of *Bipin Shantilal Panchal v. State of Gujarat and Another*, 2001 AIR SC 1158 and judgment of this court in Criminal Writ Petition No.1764 of 2019 in the case of *Sanjay S/o Shankar Bhalkar and others v. State of Maharashtra and others* dated 13-01-2020.

5. Learned APP opposed the revision application on the ground that witness was almost cross-examined. According to him, trial Court has a right to curtail and control cross-examination and as such when the cross-examination was exceeding, learned trial Court did not permit the same and hence, he prays to reject revision application.

6. After considering the above submissions and on going through papers, it is emerging that present revisionist is facing trial, which is being conducted by learned District Judge-1 Vaijapur vide Sessions Case No.140 of 2023. It further transpires that prosecution has already examined 13 witnesses by way of oral evidence. It is the last witness i.e. PW13 Sitakant, who seems to be while under cross-examination, occasion arose for filing application by defence i.e. exhibit 189 and the order passed below exh.184 is assailed therein.

Learned Counsel for applicant has placed on record copy of testimony of PW13 Sitakant, Assistant Chemical Analyzer. It appears that, he was initially examined by learned APP for State on 29-11-2024 and further taken over by defence for cross-examination, which commenced from paragraph 8 onwards and when the cross-examination had reached upto paragraph 11 wherein expert was

questioned about some guidelines regarding collection, packaging of biological samples and witness had answered and denied that he had received samples in plastic bag and they were contaminated. After such recording, it seems that, learned trial Court has noted in the evidence itself as “*The learned counsel for the accused was asked to file an application seeking permission to the question which was proposed by him. However, instead of filing application, he moved a purshis and stated therein that he asked the question to witness and the witness had already answered it. It seems that learned counsel did not understand the implication of asking him to file the application. The purshis which is filed is appearing to be in the nature that he does not require any permission of the court and he can ask any question and the Court must record it. In such circumstance, learned counsel needs to be restricted from further cross-examination. Hence, the cross examination of witness is closed.*”

It appears that it is the above order of closing cross-examination, with which the revision applicant is precisely aggrieved.

7. Copy of exh.189 praying to set aside cross-examination closing

order passed on exh.184 and to permit PW13 Sitakant to be cross-examined is moved on behalf of accused nos.1 and 2 through learned defence Counsel on 29-11-2024 itself i.e. on same day. Say of learned APP is also obtained on the same date and impugned order below exh.189 seems to be passed on 03-12-2024 rejecting the application to set aside “cross-examination closing order”.

8. Learned Counsel for revisionist invited attention of this court to the observations of learned trial Court, more particularly to paragraph 4 of the impugned order and submitted that in the interest of fair trial and fair opportunity to cross-examine PW13, impugned order on exh.189 be set aside.

9. Exhibit-189 is an application for setting aside cross-examination closing order passed i.e. on exh.184, which is the substantive evidence of PW13 Sitakant, an expert. Perused the noting of trial Court taken during cross-examination in paragraph 11 was in progress. Paragraph 4 of the impugned order, is as under :

“I am well aware that learned counsel Shri R.P.Mote was cross-examining witness on behalf of accused persons and not for himself. But it does not mean that he can act against settled principles of law and against the order of

*the Court. Since the act done by counsel before the court binds his client and since the **cross-examination of the concerned witness has been closed due to improper conduct of learned counsel for accused Nos.1 and 2**, the question of setting aside the order does not arise.”* Hence, application exh.189 is rejected.

10. In the light of above discussion, here revision seems to be offshoot of order of closing cross-examination of expert witness PW13 Sitakant conducted by defence. It need not be stated that cross-examination is a valuable and precious right of accused. Every accused has right of fair trial, which includes fair opportunity to defend himself. From above discussion, it is emerging that in trial Court, last witness of prosecution i.e. PW13 Sitakant, an expert was facing cross-examination and the above situation seems to have cropped up. No doubt every trial Judge has right to control cross-examination, but equally every accused has corresponding right to bring on record relevant cross-examination. On going through paragraph 11, cross-examination seems to be proceeding on the point of possibility of contamination of sample due to manner of its packaging. In the considered opinion of this Court, it was a relevant question. Even expert seems to be answering the questions put in in cross-examination. As to what prompted learned trial Court to seek

prior permission for putting further questions is not getting clear. If at all the learned trial Judge felt that cross-examination is going on irrelevant footing or off-track, then it is justified on the part of trial court to request cross-examiner to restrict the cross-examination on relevant point. Here, *prima facie* such situation does not seem to have arisen. As long as cross-examination is on effective and material points and it is relevant, the same needs to be permitted.

11. Here, from above reproduced observations of learned trial court in paragraph 4, primarily it seems that learned trial Judge felt offended due to improper conduct of defence Counsel. However, it is to be borne in mind that during course of trial, on account of any differences between Court and cross-examiner, rights of accused should not be adversely affected. With such perception and view and more importantly in the interest of fair trial and opportunity, impugned order closing cross-examination is required to be set aside. Learned defence Counsel is also expected to present himself in conducting the matter in a manner which would not disturb the decorum of the Court while proceedings are in progress and every endeavour should be made to harmoniously conclude the proceedings, which are already at fag end. It appears from Roznama

that stage of recording statement under Section 313 of the Code of Criminal Procedure, has already being reached. In view of above discussion, I proceed to pass following order.

ORDER

(I) Criminal Revision Application No.319 of 2024 is allowed.

(II) Trial Court to offer opportunity to defence Counsel to further cross-examine PW13 Sitakant Gopal Palaskar, Assistant Chemical Analyzer as per it's convenient date by recalling the said witness.

(ABHAY S. WAGHWASE)
JUDGE