



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL WRIT PETITION NO. 1821 OF 2023

Bandu Bajirao Varape and others

VERSUS

The State of Maharashtra

...

Advocate for the Petitioner : Mr. Gandhi Amol Subhash

APP for Respondents: Mr. P.K. Lakhotiya

.....

CORAM : SHIVKUMAR DIGE, J.

DATED : 13th AUGUST, 2024.

PER COURT :-

1. By this writ petition, the petitioners are challenging the order dated 23.10.2023, passed by the Additional Sessions Judge, Beed in Criminal Revision application No. 84 of 2023 and the order dated 25.9.2023 passed by the Chief Judicial Magistrate, Beed below Exh. 124 and 140 in R.C.C. No. 164 of 2012.

2. It is the contention of learned counsel for the petitioners that the petitioners have been charged under Sections 147, 148, 149, 324, 325, 326, 504 and 506 of Indian Penal Code (for short "I.P.C."), under section 25(1) of the Arms Act and under Section 135 of Maharashtra Police Act.

3. It is the contention of learned counsel for the petitioners that

prosecution have examined four witnesses in support of their case. Thereafter, sufficient opportunity was given to the prosecution to cross examine the witnesses but the prosecution failed to secure presence of the witnesses. Hence, the learned trial court had closed the evidence of the prosecution. Thereafter, the prosecution had filed an application under Section 311 of the Cr.P.C. to examine the same witnesses. The said application was allowed by the trial court without considering the fact that already the said witnesses were examined and sufficient opportunity was given to the prosecution to examine the witnesses. Learned counsel further submitted that re-examining those witnesses would amount to filling up the lacunae. The said point was argued before the Revisional court but it has not been considered. The orders passed by the courts below are erroneous hence requested to allow the writ petition.

4. It is the contention of learned A.P.P. that the application was filed not for recalling the witnesses but for re-examining the witnesses. The witnesses mentioned in the application are eye witnesses, such as injured witnesses, Medical Officer, concerned Police Officer and independent eye witnesses. Their statements are recorded under Section 161 of Cr.P.C. and re-examining them cannot be considered as filling up the lacunae but to prove the prosecution case their evidence is necessary. The orders passed by

the courts below are well reasoned and no interference is required in it and requested to dismiss the writ petition.

5. I have heard both the learned counsel. Perused the impugned orders passed by the trial court and the revisional court. While passing the orders, the trial court has observed that the witnesses whose names are stated in application are eye witnesses, injured witnesses, Medical Officer and investigating officer. The learned trial court further observed that earlier prosecution evidence was closed by her predecessor but considering the contents in the application, it is necessary to give opportunity to the prosecution to examine said witnesses. There is no filling up of lacunae. The said order passed by the trial court is confirmed by the Revisional court. I do not find any infirmity in the order passed by the courts below. In my view, the names of the witnesses, mentioned in the application, are injured witnesses, eye witnesses, Medical Officer, panch witnesses and concerned police officer. The statements of these witnesses have been recorded under section 161 of the Cr.P.C. If earlier these witnesses remained absent before the trial court, it cannot be a ground to close the evidence of prosecution. The trial court should have given sufficient opportunity to the prosecution to prove their case but it appears that in haste earlier the trial court had closed the evidence of prosecution. Recalling the witnesses would not amount

to fill up the lacunae. Considering these facts, I pass the following order

O R D E R

- I. Writ petition is dismissed.
- II. The trial court is requested to dispose of the pending R.C.C. No. 164 of 2012, as early as possible and preferably within three months from today.

(SHIVKUMAR DIGE, J.)

rlj/