



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

911 CRIMINAL WRIT PETITION NO. 1830 OF 2023

SHAIKH ASHFAQ SHAIKH ISAQ INAMDAR
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for the Petitioner : Mr. Pradip Sathe h/f Mr.Sayyed Tauseef Yaseen

APP for Respondent/State : Mr.C.V. Bhadane

Advocate for Respondent nos. 2 to 6 and 8 : Mr. G.R. Rokade h/f Mr.S.T. Salunke

Advocate for Respondent no.7 : Mr.Vikas Jadhav h/f Mr. K.J. Suryawanshi

Advocate for Respondent No.9 : Mr. Ansari Asfia Nuzhat

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 23rd July, 2024.

P.C.:

1. By this writ petition, the petitioner is challenging the orders passed by the Judicial Magistrate, First Class at Exhibit-F, G, D and I. By the said applications, the petitioner was praying before the trial Court to add the complainant namely Vilas Warekar as an accused and allow the petitioner to depose in the said matter.

2. It is contention of the learned counsel for the petitioner that the criminal case is filed against respondent nos.2 to 9 under sections 420, 465, 468, 471 read with 34 of the Indian Penal Code. The learned counsel further submitted that informant is Vilas Warekar. The learned counsel further submitted that during the pendency of the case, there is compromise between the informant and accused/respondents. During the course of investigation, the Investigating Officer has recorded the statement of petitioner as witness in connection with the

said crime. The learned counsel further submitted that during the pendency of the criminal trial, there is compromise between the first informant and respondents-accused, hence the petitioner had filed applications for joining the informant as accused and allow the informant to examine himself as a witness but the said applications have been rejected by the trial Court without any reasonable ground, hence requested to allow the writ petition.

3. It is contention of the learned counsel for respondent nos.2 to 9 that the petitioner has no concern with the said crime. Learned counsel further submitted that the respondent no.2 has defeated the petitioner in election hence he has grudge against the respondents. Though the statement of the petitioner is recorded by the Investigating Officer, he is not aware about the facts of the present crime, which is pending before the trial Court. The trial Court has considered all the aspects and has passed the well reasoned order. No interference is required in it. The learned counsel further submitted that the witness summons was served on the petitioner but he remained absent. The learned counsel further submitted that statement under section 313 of Criminal Procedure Code is recorded. Argument is over and the matter is for judgment, hence requested to dismiss the writ petition.

4. The learned APP submitted that appropriate order be passed.

5. I have heard all the learned counsel. Perused the impugned orders passed by the trial Court.

6. Admittedly, the petitioner's statement is recorded by the Investigating Officer. If the petitioner's statement is recorded he should have been examined as a witness. It appears that though the witness summons was served upon the petitioner, he remained absent before the trial Court. As the petitioner is ready to depose, the trial Court should have considered his application. Whether this witness is relevant with the present crime or not will be decided at the time of marshaling of the evidence, as the petitioner's statement is recorded by the investigating Officer, hence he has to be examined as witness. The petitioner is praying for joining the informant as accused, the said prayer can not be allowed. Hence I pass the following order :-

ORDER

- (i) The writ petition is partly allowed.
- (ii) The impugned order at Exhibit-I is quashed and set aside.
- (iii) The trial Court shall record the evidence of the petitioner within one month from receipt of the copy of this order. The Respondents can cross-examine the petitioner.
- (iv) The petitioner shall appear before the trial Court for recording of his evidence within eight days of receipt of this order.
- (v) The writ petition is disposed of accordingly.

[SHIVKUMAR DIGE, J.]