

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.276 of 2024**

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State of Maharashtra ...Applicant  
vs.  
Umaimma Chitalwala ...Respondent

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|------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| Mr. C.K. Talekar a/w. Mr. Rohit Rajbhor                                                                                | Advocate for Applicant.          |
| Mr. Sudeep Pasbola a/w. Mr/ Swaraj Sable, Mr. Rohin R. Chauhan, Mr. Rajan Gurnani, Mr. Shivraj Patil, Mr. Chirag Godse | Advocate for Respondent          |
| PSI Ashok Sutar                                                                                                        | D.B.Marg Police Station, Mumbai. |

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**CORAM : S. M. MODAK, J.**

**DATE : 29<sup>th</sup> JULY 2024**

**P. C. :-**

1. Heard learned Special Public Prosecutor Shri Talekar and learned Advocate Shri Pasbola for the Respondent.

2. On 9<sup>th</sup> July 2024, this Court has directed the

Special Public Prosecutor to prepare a fresh application by giving certain details. Even though such application is not prepared, according to Mr. Talekar, the police did made correspondence with three offices-

- (i) office of MCGM;
- (ii) office of Fire Brigade;
- (iii) office of MHADA.

According to him, though they got some response from the two offices, yet the papers are not traceable with the office of MCGM. He is ready to file an application to call witness from the office of MHADA and Fire brigade. For the record from MCGM, still he needs some time.

2. According to Mr. Talekar, certain documents were collected during the investigation, but all are not collected and those other documents will be required for witness to give evidence. He pointed out the following documents annexed to the Revision Application, they are -

- (i) Statement of one Mahendra Madhusudan

Desai from Fire Brigade (page 179). Mr. Desai is no more. He wants to examine some other conversant witness.

(ii) Statement of Rajendra Balkrishna Tikare, Executive Engineer, MHADA (page 118). According to Mr. Pasbola, he did attended the Trial Court, but could not be examined because relevant papers were not before the Court.

(iii) Notice issued by the Executive Engineer, MHADA dated 17<sup>th</sup> July 2006 to M/s.N.Lookmanji Mithaiwalla Pvt. Ltd. and Sangam Juice Centre.

(iv) Other correspondence at page 192 to page 200.

3. According to Mr. Pasbola, the trial cannot be conducted on the basis of information possessed by the learned Special Public Prosecutor Shri Talekar, but it should be on the basis of material collected during investigation.

4. Learned Additional Sessions Judge while

rejecting the application on 22<sup>nd</sup> March 2024, has emphasized on certain lack of communication in between learned Special Public Prosecutor and the Investigating Officer. It is true that the Investigating Officer, who was given charge, has tendered a report dated 29<sup>th</sup> February 2024, giving the information of the total witnesses in a tabular manner. Whereas in the application dated 20<sup>th</sup> March 2024, Mr. Talekar had given the details of the six witnesses.

(vi) The witnesses at Serial Nos. 1,2 and 3 relates to the medical record. Mr. Pasbola has submitted to pass an appropriate order. **Let the trial court to consider that request.** The witnesses at Serial Nos. 4 to 6 pertains to the officers from MHADA, MCGM and Fire Brigade.

3. No doubt, the prosecution has got right to examine the witness. However, it is on the basis of materials collected during investigation. Such material are collected by recording of statements under Section

161 of the Code. At the same time, the Court has to ensure that the accused may not be put to a surprise all together with the new material. So the prosecution can get liberty to examine the concerned witnesses by calling the record referred by them in their statements or in the reports. If new material is there, the concerned witness must state so during evidence and the Trial Court can decide this aspect.

4. With these directions, the following order is passed:--

#### O R D E R

- (i) The Revision Application No. 276 of 2024 is partly allowed.
- (ii) The order dated 22<sup>nd</sup> March, 2024 passed by the Court of Additional Sessions Judge Mumbai, at Greater Mumbai is set aside.
- (iii) The prosecution is granted liberty to file an application to examine those witnesses, whose statements are recorded from the office of MHADA,

MCGM and Fire Brigade.

- (iv) The prosecution is granted liberty to summon those documents which are referred in the police statements and in the reports filed by them.
- (v) If the prosecution wants to rely upon other documents, they are at liberty to make necessary application for calling those documents only after concerned witness will depose basic facts for calling of record and the Trial Court to decide such prayer on merits after hearing the accused.
- (vi) With these directions, the Revision is disposed of.

**[S. M. MODAK, J.]**