



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

45 CRIMINAL WRIT PETITION NO. 968 OF 2024

**SHANTARAM PRABHAKAR PUTTAWAR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH POLICE STATION OFFICER**

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Advocate for the Petitioner : Mrs.Rani Bharuka-Bora h/f.Mr.Bora Satyajit S.
APP for Respondent/State : Mr.K.K.Naik

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CORAM : SHAILESH P BRAHME, J.
DATE : 24th MARCH 2025

PER COURT :

1. Heard both sides.
2. The petitioner is challenging order dated 15.04.2024 below Exhibit-77 and order dated 15.05.2024 below Exhibit-84 foreclosing right to cross-examine witness No.4 i.e Investigating Officer.
3. Petitioner is facing prosecution for offences under Prevention of Corruption Act, 1986 in Special (ACB) Case No. 4 of 2012. In all four witnesses were examined during the course from 2012 to 2023. On 15.03.2024 examination-in-chief of prosecution witness No.4 was concluded. The matter was posted on 15.04.2024 for the cross-examination of the witness but lawyer of the petitioner was absent and no cross order was passed. Simultaneously application below Exhibit-77 for adjournment was also rejected. Against that

application Exhibit-84 for setting aside No Cross order was filed, it was also rejected by another impugned order.

4. Learned counsel Mrs.Rani Bharuka-Bora holding for Mr.Satyajit Bora appearing for the petitioner submits that the petitioner is not protracting the proceedings. The deposition of the earlier witnesses were recorded from 05.03.2020 till 03.08.2023. On 01.04.2024 PW-4 was absent and matter was adjourned on 15.04.2024. On that date, there was abstinence from the work due to demise of one of the Senior Member of the bar. The cross-examination could not be conducted. It is submitted that reasons for rejecting application below Exhibit-77 are unsustainable. She would further submit that application Exhibit-84 is also rejected attributing lapses on the part of the petitioner which is perverse. It is submitted that overall approach of the Learned Judge is against principles of natural justice.

5. *Per contra*, learned APP supports the impugned orders. He would submit that the trial judge granted adequate opportunities to the petitioner. The lapses on the part of the petitioner and his lawyers have been recorded elaborately. It is vehemently submitted that matter is very old and Learned Judge is justified in insisting the parties for expeditious disposal of the proceedings.

6. I have considered rival submissions of the parties. First witness was cross-examined on 29.03.2022. Second witness was cross-

examined on 01.12.2022. Third witness was cross-examined on 03.08.2023. The examination-in-chief of the fourth witness that is Investigating Officer commenced on 15.12.2023 and continued till 15.03.2024 which is evident from the depositions placed on record.

7. It is recorded in the Roznama that the matter was posted on 01.04.2024 for cross-examination of PW-4. But the witness was absent. Pertinently petitioner and his lawyer were present. Application for adjournment for non-availability of the witness was rejected and the matter was posted on 15.04.2024. On 15.04.2024 there was abstinence from the work due to demise of one of the senior members of the Bar. Hence, application Exhibit-77 was presented for adjournment by the petitioner. The abstinence of the members of the bar was not due to strike but the demise. The matter was very old one and anxiety of the presiding officer is understandable but the pragmatic view should have been taken instead of rejecting application Exhibit-77. It is informed by both the sides that on 15.04.2024, order of no cross was also passed by the presiding officer. In my considered view, this approach is totally pedantic and against principles of natural justice.

8. Had the short date been given, further consequences could have been avoided. The petitioner is justified in presenting application Exhibit-84. The findings recorded by Learned Judge in rejecting application Exhibit-84 are unsustainable because examination-in-chief continued up to 15.03.2024 and there was no

occasion for the petitioner's lawyer to conduct cross-examination. Learned counsel for the petitioner is justified in contending that findings in that regard are perverse. It is overlooked that on 01.04.2024, the self-same witness was absent when the petitioner and his lawyer were present and ready to conduct cross-examination. Therefore it can be inferred that the petitioner was not having any oblique intention in protracting the proceedings.

9. On 25.04.2024 the next witness was cross-examined. It could not have been contemplated by the petitioner and his lawyer that on 02.05.2024 the Investigating Officer would remain present and there could be occasion to recall the witness. I do not find that petitioner and his lawyer can be castigated for serious lapses. As the matter is old one, care needs to be taken for extending opportunity to cross-examination to the petitioner. I find that ends of justice would be met if opportunity is extended to petitioner to conduct cross-examination of PW-4.

10. Learned counsel for the petitioner undertakes that her client shall co-operate and conduct the cross-examination within specified period. I therefore pass following order :

ORDER

- a) Impugned orders passed by Learned Additional Sessions Judge-1, Nanded on 15.04.2024 below Exhibit-77 and 15.05.2024 below Exhibit-84 in Special (ACB) Case No.04 of 2012 are quashed and set-aside.

- b) Application Exhibit-84 stands allowed and it is directed that Prosecution Witness No.4 shall be summoned for the cross-examination.
- c) The petitioner shall conduct and conclude cross-examination within a period of two weeks from date of appearance of said witness.
- d) The petitioner shall co-operate the presiding officer for expeditious disposal of the trial.
- e) Writ Petition is allowed in above terms.
- f) The parties shall appear on 01.04.2025.

[SHAILESH P BRAHME, J.]

vsj..