



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

CRIMINAL APPLICATION NO. 4286 OF 2024

BHAGWAT BABASAHEB WARAT

VERSUS

THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Shinde Shrikishan Shripati

Advocate for Respondent : Mr. K.K. Naik

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CORAM : SHAILESH P. BRAHME, J.

DATE : 3rd APRIL 2025

PER COURT :

. Heard both sides.

2. The Petitioner who is original accused, is challenging order dated 05.01.2024 passed below Exhibit-17 in RCC No.536/2020 as well as judgment and order dated 02.08.2024 passed in Criminal Revision No.07/2024, thereby allowing application at Exhibit-17 preferred by the Respondent/State under Section 311 of the Code for issuing witness summons to the son of deceased Informant.

3. The Petitioner is facing prosecution in RCC No.536/2020 instituted at the instance of one Ashok Sontakke vide his report with the Police Station. Informant-Ashok died on 20.08.2020. The charge-sheet was filed on 23.11.2020. RCC No.536/2020 is at the stage of recording of evidence of Respondent/State.

4. The allegations against the Petitioner is that deceased was the brother of Petitioner's wife – Ushatai who is no more. The

deceased initiated proceeding for heirship certificate before the Civil Court, claiming right in the house occupied by deceased wife of the Petitioner. The Petitioner contested the proceeding on the basis of documentary evidence. It is alleged by the Informant that the documents pressed into service by the Petitioner were bogus and the house in question was ancestral. There was no relationship of the Petitioner with sister of the Informant.

5. Respondent submitted application at Exhibit-17 to issue witness summons to son of deceased Informant. It was contested by the Petitioner. His objection was overruled holding Court had ample power under Section 311 to issue witness summons at any stage and to any person. Application at Exhibit-17 was allowed on 05.01.2024. Being aggrieved, Petitioner preferred Criminal Revision No.7/2024 which ended in confirmation of the order passed by the trial Court.

6. Learned Counsel for the Petitioner submits that there are in all 12 witnesses whose statements are recorded and who are named in the charge-sheet. Instead of examining those witnesses, Application-17 was filed for witness summons to son of deceased – Informant which is improper and arbitrary. It is contended that both the impugned orders are perverse and arbitrary because Respondents failed to explain the circumstances for taking out witness summons against son of the deceased Informant.

7. Learned APP supports impugned order. He would submit that impugned orders are perfectly within four corners of Section

311. It is further submitted that it is up to the Respondents to decide as to which witness is to be examined.

8. I have gone through the impugned orders passed by the trial Court and impugned judgment by the Revisional Court. There is no dispute that trial Court has ample power under Section 311 to issue summons at any stage of proceeding and to any person. It is admitted position that Informant died on 20.08.2020. It is a family dispute between the Informant and the Petitioner. Both of them are claiming right over the residential house. The proceedings are pending before the Civil Court. Prima facie it cannot be ruled out that son of the deceased Informant would be the relevant witness to unravel the controversy between the parties. The Informant is not alive. It cannot be said that he is totally stranger to the controversy involved in the matter.

9. Admittedly the investigation was completed and the charge-sheet was filed. The Investigating Agency recorded statements of the witnesses. The charge-sheet indicates 12 witnesses. The matter is at the stage of commencement of the evidence of Respondent/State. Application at Exhibit-17 does not spell out any circumstance or the reason for proposing to examine son of the deceased-Informant prior to those 12 witnesses. I am of the considered view that Application at Exhibit-17 is presented at an inappropriate stage. The endeavour should have been made by the Respondent to lead the oral evidence from amongst the witnesses which are already figuring in the charge-

sheet. At the subsequent stage of the proceeding or after recording evidence of few witnesses, it could have been open to take out application under Section 311 to issue witness summons to person who is not figuring in the charge-sheet and whose statement was not recorded during the investigation.

10. Learned Counsel for the Petitioner has made a case that Application at Exhibit-17 is silent as to why a person is required to be examined who is not named in charge-sheet at the threshold. I find that both impugned orders are unsustainable because this aspect of the matter is lost sight of by the learned trial Judge as well as Revisional Court. It is clarified that Respondent would be at liberty to file such application after examining few witnesses, if so required. I, therefore pass following order :

ORDER

- (i) Criminal Application is allowed.
- (ii) The order dated 05.01.2024 below Exhibit-17 in RCC No.536/2020 and judgment and order dated 02.08.2024 passed by learned Sessions Judge, Beed in Criminal Revision Application No.7/2024 are quashed and set aside.
- (iii) However the Respondent would be at liberty to take recourse to Section 311 after examining few witnesses or at the subsequent stage of the proceeding., if so desired.

**SHAILESH P BRAHME
JUDGE**

NAJEEB..