



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
951 CRIMINAL WRIT PETITION NO. 2045 OF 2024
RAJU (RAJABHAU) MAHADU DAHIPHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner : Mr. Murkute J.M.

APP for Respondent/State : Mrs.Ashlesha S.Deshmukh

Advocate for Respondent No.2 : Mr.Z.Z.Sayyed h/f. Mrs. Priyanka R.Deshpande

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CORAM : SHAILESH P BRAHME, J.

DATE : 27th MARCH 2025

PER COURT :

. Heard both sides. Though Respondent Nos.3 to 6 are served, none appeared on their behalf.

2. The order under challenge is rejection of application Exhibit-129 submitted by the Respondent No.1/state to issue witness summons to medical officer who actually examined the informant and the injured witnesses. Petitioner is the informant and injured witness. The respondent Nos.2 to 6 are accused persons who are facing trial in Sessions Case No.2 of 2021 before Additional Sessions Judge, Ahmedpur, Distict Latur.

3. It is a case of prosecution that informant, his father and brother were assaulted on 17.07.2020 by the accused. Immediately injured were shifted to the government hospital and were being treated thereat. Injured witness Evalis sustained major injury inflicted

by iron rod and he was indoor patient for thirty days. The injured were treated by Dr.Ganesh Swami. However after initial treatment further treatment was administered under the supervision of Dr.Pramod Sangvikar. In the charge-sheet Dr.Pramod Sangvikar is cited as a witness.

4. The prosecution examined witnesses including Dr.Pramod Sangvikar as PW-11. The respondent No.1/state submitted application Exhibit-129 seeking witness summons to Dr. Ganesh Swami who administered the treatment and at whose supervision, the medical papers were prepared, immediately after the hospitalization. Inadvertently he could not be cited as a witness. The said application is contested by the accused persons. By impugned order it came to be rejected on the ground that already Dr.Pramod Sangvikar was examined as PW-11, who had given final medical certificate.

5. Learned counsel for the petitioner submits that there are medical papers on record which are required to be proved by examining Dr.Ganesh Swami. Inadvertently Dr.Ganesh Swami could not be cited as a witness in the charge-sheet but he is the best person to throw light on the nature of injury and the treatment given to the injured witness. Learned Judge committed perversity in rejecting the application.

6. Learned APP supports the petitioner.

7. Learned counsel Mr.Sayyed holding for Mrs.Deshpande

appearing for Respondent No.2 repels the submissions of the petitioner. He would submit that present petition is not maintainable because state is not coming forward to challenge the impugned order. The private party can not prosecute the matter in this manner as per section 301 of Cr.PC (section 338 of B.N.S.S,2023). It is further submitted that Dr.Swami is not concerned either with the treatment or the medical papers.

8. The present petition is filed by the informant at whose instance the report was lodged. He is injured witness. I have gone through section 301 of Cr.PC(section 338 of B.N.S.S) which contemplates the conduct of the prosecution by the Public Prosecutor or the A.P.P. In the present case the question is as to whether the private person can maintain the present petition challenging the order in question. Considering the provisions of sections 301 and 302 of Cr.PC (sections 338 and 339 of B.N.S.S,2023), I find that there is no impediment in entertaining the present petition. The petitioner is victim and is espousing the cause of the respondent/state. It is not that the application Exhibit-129 was preferred by private person. The objection of learned counsel for the Respondent No.2 is hyper-technical. Besides that the trial court has ample power under section 311 of Cr.PC (section 348 of B.N.S.S) to examine any person as a witness at any stage of the trial. In that view of the matter I overrule the objections of the Respondent No.2.

9. I have considered rival submissions of the parties. After perusing first information report, it is clear that petitioner is the

informant and injured witness also. His brother Evalis sustained major injury. Petitioner, his brother and father were being treated at the medical hospital at Latur. The treatment was given by Dr.Ganesh Swami. His brother was indoor patient for thirty days. Though final opinion is given by Dr.Pramod Sangvikar, it can not be said that Dr.Swami had no concerned with the treatment or the medical papers. The matter is at the evidence recording stage and endeavour should always be made to extend opportunity to both the sides to unravel the truth. Medical papers is part of charge-sheet. Learned Judge should have given one opportunity by issuing witness summons to the concerned medical officer. I find that the approach of the learned Judge is against principles of natural justice as well as arbitrary. I therefore pass following order :

ORDER

- a)Writ petition is allowed.
- b) Impugned order dated 18.10.2024 below Exhibit-129 in Sessions Case No.2 of 2021 passed by the Additional Sessions Judge, Ahmedpur,District Latur is quashed and set-aside.
- c) The application Exhibit-129 stands allowed.

[SHAILESH P. BRAHME, J.]

vsj..