



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

52 CRIMINAL WRIT PETITION NO. 632 OF 2024

**PIYUSH S/O VINOD MARATHE
VERSUS
THE STATE OF MAHARASHTRA**

.....

Advocate for the Petitioner : Mr. Deshmukh Charuta Sunil
APP for Respondent/State : Mrs. Chaitali Choudhari Kutti

...

**CORAM : SHAILESH P. BRAHME, J.
DATE : 15th APRIL 2025**

PER COURT :

. Heard both sides finally at the admission stage.

2. Petitioner is aggrieved by order dated 14.08.2023 passed below Exhibit-47 by Chief Judicial Magistrate, Ahmednagar in R.C.C No. 970 of 2018, recalling the informant for further examination.

3. Learned counsel for the petitioner submits that application Exhibit-47 was submitted belatedly after recording deposition of four witnesses of the prosecution. The compact disc and the CCTV footage were not collected during the course of investigation and are not part of charge-sheet. It is submitted that the material which was not part of the investigation or charge-sheet can not be brought on record for the first time by resorting to Section 311 of Cr.PC (Section 348 of B.N.S.S). It is further submitted that the witnesses and informant did

not disclose the CCTV footage or compact disc. Hence, said material is extraneous. It is submitted that respondent and the informants are protracting the proceedings. Impugned order is perverse and unsustainable.

4. *Per contra* learned APP submits that recalling of informant is not for bringing any new material on record. It has already been deposed by PW-1/informant about the CCTV footage and compact disc. The material which is sought to be proved by recalling is relevant and necessary to decide the controversy. It is further submitted that petitioner was not alert in raising objection when compact disc were produced and marked as Article 'A' and 'B'. It is further submitted that impugned order is guarded one and care has been taken to supply the copy of the compact disc to the petitioner also. Hence, it can not be faulted.

5. The offence pertains to ruckus between the neighbours. First Information Report was lodged on 23.01.2018 at the instance of Sanjay Bhaskar Kshemkalyani. Thereafter, investigation was conducted for more than nine months. Charge-sheet was filed on 27.10.2018. In the deposition of PW-1/informant it is mentioned that there was CCTV footage of the incident in question captured by camera installed by the informant and compact disc is produced on record. It does not reveal from record that there was panchnama conducted for recovery. CCTV footage through compact disc during the course of investigation. It is evident that CCTV footage or the

compact disc are not the part of charge-sheet.

6. It is not the case of the respondent that investigating officer resorted to Section 173 (8) (Section 193 of B.N.S.S) for further investigation and in pursuance of that some material was collected which is sought to be proved by submitting application Exhibit-47. Under these circumstances, I am of the considered view that what is sought to be proved by making application Exhibit-47 is extraneous.

7. Although there are powers under Section 311 of Cr.PC (Section 348 of B.N.S.S) to be exercised at any stage and time, those are not unfettered. Unlike civil proceedings, it is not permissible in a prosecution to bring on record any new material. Impugned order fails to take into account this aspect of the matter and therefore has resulted into grave error of jurisdiction. Learned counsel for the petitioner is right in contending that for ten months the investigation was going on and no endeavour was made by the informant or witnesses who are educated persons to request the investigating officer to collect CCTV footage or the compact disc. In all four witnesses were examined by the time but except informant, nobody disclosed CCTV footage or the compact disc is a factor which weigh in favour of the petitioner.

8. When compact discs were produced, those were marked as Article A and B and a certificate under section 65B of Evidence Act was also produced on record. Just because petitioner did not raise

objection to the same, would not validate the probative value. Compact discs need to be proved in accordance with law. Their production alongwith some certificate would not be construed to be proof. Whether the material in question is collected by following due procedure of law is also relevant factor which is overlooked by Learned Judge.

9. I find that impugned order is unsustainable and there is error of jurisdiction.

10. Writ Petition is allowed in terms of prayer clause (B).

[SHAILESH P BRAHME, J.]

vsj..