

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3513 OF 2024

State of Maharashtra

... Petitioner

Versus

Vishal Dattatray Kamble and Anr.

... Respondents

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Ms. Poonam Bhosale, APP for the State-Petitioner.

Mr. Ritesh Thobde a/w. Mr. Changdev S. Shingade, Advocates for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATED : 3rd APRIL, 2025.

P. C. :

1. The prosecution has challenged the impugned order dated 01.09.2023 passed by Addl. Sessions Judge (for short “learned Trial Court”) Solapur in Sessions Case No. 116 of 2021 below Exhibit 165 filed under section 311 of Code of Criminal Procedure (for short “Cr.PC.”).

2. It is contention of learned APP that prosecution had filed application for seeking permission to add additional evidence before the Trial Court under section 173 (8) of Cr.PC. for production of documents, but the said application is rejected by the learned Trial Court. Learned Counsel further submitted that the respondents have been charged under Section 302 and relevant Sections of Indian Penal Code (for short “IPC”).

The allegations against the respondents are that the respondents had kidnapped the deceased, murdered him and buried him. The dead body of the deceased was recovered at the instance of the respondents but the dead body was not in a position to identify, hence DNA of the dead body was taken and DNA of mother of the deceased was taken and it was sent for examination to the Forensic Science Laboratory (FSL). The FSL report received by the investigating officer, stating that, the DNA is not interpreting. Thereafter, the investigating officer send DNA samples to FSL Telangana. The report is received from FSL, Telangana stating that, the DNA of the deceased is matching with DNA of his mother. So, it is very crucial point of evidence and the prosecution wants to produce it before the Trial Court, but Trial Court has rejected the application, which is erroneous. Learned APP further submitted that it is settled law that prosecution can produce evidence at any stage, but this fact is not considered by the Trial Court and requested to allow the application.

3. It is contention of learned Counsel for the respondents that trial is almost completed. The matter is kept before the Trial Court for final arguments, learned APP has partially completed his final arguments. Thereafter, the application under Section 311 of Cr.P.C. was filed before the Trial Court. Learned Counsel further submitted that the said application was filed only for filling up lacunas of prosecution evidence. No such

application was earlier filed during the pendency of the trial. The Trial Court has passed well reasoned order no interference is required in it and requested it to reject the application. He relied on, *Peethambaran Vs. State of Kerala and Anr*¹.

4. I have heard both the learned counsel. Perused impugned order. The learned Trial Court has rejected the application filed by the prosecution on the ground that evidence of the prosecution witness is over. If the said application is allowed it would amount to filling of lacunas of prosecution's case and entire defence will be changed. The prosecution had filed under Section 311 of Cr.PC. which read thus.

“Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

This Section provides that if requires at any stage the Court can recall or reexamine any person as a witness. In the present case, admittedly prosecution had called DNA report from the State FSL. After getting that report in year 2023, the DNA samples were sent to Telangana FSL. As, as per prosecution's case the said DNA samples were taken in the year 2021 and after two years the said samples were sent in the year 2023 to FSL Telangana. That too after receiving of report of State FSL. So

¹ 2023 SCC Online SC 553

it raises doubt about the said samples. In view of above, I pass following order:

ORDER

- (i) The Writ Petition is dismissed.
- (ii) The Trial Court shall proceed with the matter on its own merit.

(SHIVKUMAR DIGE, J.)