



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 534 of 2023

With

R/CRIMINAL REVISION APPLICATION NO. 541 of 2023

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SANJIV RAJENDRA BHATT
Versus
STATE OF GUJARAT
=====

Appearance:

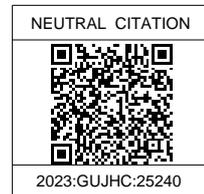
MR AJ YAGNIK(1372) for the Applicant(s) No. 1
MR MITESH AMIN PUBLIC PROSECUTOR ALONG WITH MS MAITHILI
MEHTA APP for the Respondent(s) No. 1
=====

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 05/05/2023

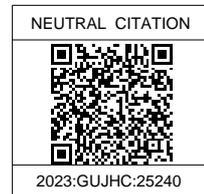
ORAL ORDER

1. The prayer is made to examine the correctness, legality and propriety of order below Exhibits-648 and 649 dated 13.04.2023, impugned in Criminal Revision Application No.534 of 2023 and Exhibit-725, dated 27.04.2023, impugned in Criminal Revision Application No.541 of 2023 passed by the 3rd Additional Sessions Judge and Special Judge [NDPS Act], Banaskantha, Dist. - Palanpur in Special [NDPS] Case No.3 of 2018, and accordingly prayed to quash and set aside the same.



2. Mr. A.J. Yagnik, learned advocate for the applicant stated the list of about 69 witnesses were provided by the prosecution and out of those, 19 were examined, while 50 were dropped. He submits that at the stage of defence, an application was moved with a list on 06.04.2023 by the present applicant to examine about 19 witnesses. Mr. Yagnik submitted that permission to examine four witnesses were granted, and out of them, one has died; while one turned hostile, and the permission for examination of one was with qualification that he could be only contradicted and another witness prayed for is a accused turned approver, which was rejected. Mr. Yagnik stated that F.S.L. officer, Mr. M.P. chaudhry, listed at serial no.7, was also not granted permission for examination; thus stated that as a right of fair trial equal opportunity is required to be granted to both the sides.

3. While countering the argument, Mr. Mitesh Amin, learned Public Prosecutor stated that, while after



examining 19 witnesses, a closure pursis was filed, and an application justifying the reason for dropping witnesses was filed by the prosecution, and thereafter, the matter was posted for further statement on 29.03.2023 of the accused. Mr. Amin stated that initially one whatsapp list to examine four witnesses was placed, but later on the accused disowned stating that he had not given any such instruction to his Advocate.

3.1 Referring to the provision of section 233 of the Cr.P.C., Mr. Amin submitted that the right of the accused to examine the witnesses or production of any document or thing is not absolute; it is only on the discretion of the Judge, for the reasons to be recorded, the learned trial Court Judge may refuse the application on the ground, if it is found that the purpose behind such application is vexatious or to cause delay or, even if, learned trial Court Judge considers it as defeating the ends of justice.

3.2 Referring to the witness list, Exh.648 placed by the accused, Mr. Amin submitted that four of the persons



at Sr. Nos.1, 10, 12 and 18, were permitted to be examined, while the particulars mentioned at Sr. No.1 is concerned, it relates to the calling of the original inquiry report and papers pursuant to inquiry conducted by Mr. D.K. Dhagal. It is stated by Mr. Amin that application under section 91 Cr.P.C. was moved and at list, Exh.236, about 207 documents were placed on record containing volume of 1046 pages, and thus, the learned trial Court Judge permitted the examination of the said witness for contradicting him, where the inquiry was on the application made by Secretary, Bar Association, Pali. The person cited at Sr. No.2 had turned as an approver. It is submitted that the said witness was examined for about three months as P.W.9. The order was challenged of his turning as an approver, who was even again recalled and was examined at length; thus Mr. Amin submitted that no prejudice has been caused to the applicant denying the examination of the approver, who was a P.I. to the present applicant.



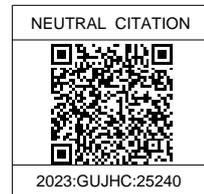
3.3 Mr. Amin stated that for the person cited at Sr. No.3 had been examined as defence witness no.1, while the person cited at Sr. No.4 - Dy. S.P. J.R. Mothaliya, the prayer was allowed, but he was dropped by the defence, and the person cited at Sr. No.5 - Mr. D.K. Dhagal, which is also connected at Sr. No.1 the said witness has been examined, and contradictions have been asked at length, as defence witness no.2. It is stated that P.I. - Dilip Agarwal at Sr. No.6 was assisting Mr. D.K. Dhagal, and therefore, the prayer for examining him had been rejected by the trial Court.

3.4 Mr. Amin further submitted for Mr. M.P. Chaudhary, Assistant Director (F.S.L.), cited at Sr. No.7, the opinion of the F.S.L. Officer was exhibited, which was on the basis of two earlier opinions of 1996; one in connection with the present matter and another of a different case. Mr. Amin submitted that at the relevant time, when the document was produced in evidence under section 293 Cr.P.C., no application was moved at



that relevant time for the objection raised to examine the said witness, thus, Mr. Amin stated that learned trial Court Judge has rightly rejected the prayer. Mr. Amin submitted that the persons noted at Sr. Nos.8 and 9, since deceased, were dropped.

3.5 Mr. Amin contended that the witness cited at Sr. No.10 were for production of the documents, which were already on record and exhibited, and defence had cross-examined, at Exhibit-699, clarification was given by the prosecution as to why the documents could not be produced since as per the provisions, they were destroyed, hence, were not available. For witness cited at Sr. No.11, as a responsible authority of Delhi Patiyala House Sessions Court, Mr. Amin stated that victim of this case had also initiated one proceeding at Rajasthan, Pali, and under transfer the trial took place at Delhi Court, where relevant papers of Palanpur were produced. As per Mr. Amin, the Hon'ble Supreme Court, has noted that the trial of both the cases are different. Further relevant



documents of Delhi Patiyala Court were produced by way of certified copies.

3.6 Mr. Amin stated for the documents prayed at Sr. No.12, that the entire charge-sheet was given to the accused; the documents prayed at Sr. No.13, station diary, has lost its utility. The witness shown at Sr. No.14 was permitted to be examined, however, the process server had put up endorsement of his death; while the persons cited at Sr. Nos.15, 16 and 17 are the Orderly (Peons) of the accused for the year 1995-1996, and the trial Court did not find any relevance. The log-book at Sr. No.18, produced at Exh.698, was allowed, and for the document prayed, at Sr. No.19, it is submitted that, relevant entries are exhibited, which is in connection with daily duties of guard and orderly and telephone messages.

3.7 Mr. Amin, in connection to Criminal Revision Application No.541 of 2023, to the list of witnesses



produced, stated that the person noted at Sr. No.1 was already examined and cross-examined at Exh.678 and 681; Sr. No.2 are for the court records; report of person at Sr. No.3 was proved in accordance to the provision of section 291A of the Cr.P.C. and the panchnama was placed on record; while person named at Sr. No.4 was investigator of the Rajasthan Court, where the Supreme Court had clearly noted that both the cases are different and distinct.

3.8 Thus, referring to the relevancy of the witnesses, Mr. Amin submitted that trial Court has rightly appreciated the list and has permitted relevant witnesses to be examined, thus, cannot be said that no right was given to the accused.

4. In the impugned order, learned trial Court Judge has permitted the examination of witness nos.1, 10, 12 and 18. Shri D.K. Dhagal has been examined at length, and the accused has availed the liberty, which has been granted to him to the extent of contradicting the



statements; thus, now the prayer would be insignificant. The witness cited at Sr. no.2 (at Exh.648) is an approver, has been examined at length, was recalled, thus, no prejudice has been caused to the accused. In case of the FSL Officer, section 293 of Cr.P.C. would become applicable, and since report of the officer was put on record by the prosecution and at that time, under objection, it was exhibited, but no prayer was made at the relevant time to call for the expert to examine him.

5. Section 293 provides that any report produced by such government scientific experts may be used as evidence during the trial, and the Court may, if it thinks fit, summon and examine any such expert as to the subject matter of his report. The Court at the relevant time did not find any reason to examine the officer, who had given his opinion on the scientific document. Section 293 Cr.P.C. by way of sub-sections (2) and (3) grants an authority to the Court to summon the experts. At that relevant time, as stated, the accused had not made any



prayer to the Court to exercise the discretion to the authority granted under section 293 for examination of the expert. The very section 293 of the Cr.P.C. has been sufficiently provided so that such government scientific experts are not unnecessarily called in the Court for giving depositions on their report. The report is considered as conclusive, unless the Court requires the examination of such expert to the subject matter of his report; and if at all, the accused found himself prejudice by the report, he could have moved the Court to exercise the discretion then. This Court does not find any reason to interfere with conclusion of not permitting the accused to examine the F.S.L. Officer, as defence witness.

6. The learned trial Court Judge has given his reasons, while permitting the accused to examine witnesses cited at Sr. No.1, 10, 12 and 18, and cogent reason has been given in light of the proceedings and facts on record, denying permission to the accused to examine the rest.



7. Section 233, reads as under:

233. Entering upon defence - (1) *Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.*

(2) *If the accused puts in any written statement, the Judge shall file it with the record.*

(3) *If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.*

8. Sub-section (3) has been sufficiently guarded so as to see that the accused would not unnecessarily prolong the matter and at the same time if the Court considers that the application is given with intention for



any vexatious purpose and even for defeating the ends of justice, the trial Court has sufficient power to reject such application.

9. This Court does not find any reason to interfere with the orders impugned, as the object in criminal jurisprudence of granting fair trial does not seem to be hampered, rather, the trial Court Judge, though had the time limit of deciding the matter on 31.03.2023, had administratively prayed for an extension, so as to ensure that the interest of the accused does not get jeopardize, and as of now the trial is required to be concluded at the end of July, 2023.

10. In view of the aforesaid, both the applications stand rejected.

Office to keep copy of this order in Criminal Revision Application No.541 of 2023.

Pankaj

(GITA GOPI,J)