



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.102 OF 2022

Zakhir Alvi, Aged 26 years, Indian
National R/o: 2nd Floor, Sonal
Apts., Near Caculo Mall, St. Inez,
Goa.

.... Petitioner.

Versus

- 1 State of Goa, Through Public
Prosecutor, High Court
Complex, Porvorim- Goa.
- 2 Police Inspector, Panaji Police
Station, Panaji-Goa.

...Respondents.

Mr. Gaurish Agni and Mr Kishan Kavlekar, Advocate for the
petitioner.

Mr Somnath Karpe, Addl. Public Prosecutor for the
respondents.

CORAM:

BHARAT P. DESHPANDE, J

Dated:

6th August, 2024

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith.
2. Matter is taken up for final disposal at the admission stage
with consent.

3. Heard Mr Agni, learned counsel for the petitioner and Mr Karpe, learned Addl, Public Prosecutor for the respondents.

4. Petition is filed challenging the order passed by the learned trial Court thereby refusing to recall PW1 who was under cross examination.

5. Mr Agni would submits that first part of cross examination of PW1 was conducted and when the matter was posted on 19.11.2018, an application was filed by the accused to provide the CD which is part of the chargesheet. Learned Trial Court passed an order on the same day on the application at Exh. 18 that since CD is already furnished to the accused, application stands disposed of.

6. Mr Agni, submits that on the same day and in the roznama, learned trial Court closed the cross examination of PW1 though oral request was made to adjourn the matter.

7. Mr Agni would then submit that thereafter an application was filed for reopening of the evidence of PW1 by giving detailed reasons. Such application was filed on 7.6.2019. However, vide order dated 1.7.2019 the said application was rejected only on the ground that there is no power to review its earlier order of closing of cross examination of PW1.

8. Mr Agni would submits that thereafter petitioner filed an application on 15.7.2019 thereby pointing out the provision that under Section 311 of Cr.P.C. which empowers the trial Court to recall a witness. Learned trial Court rejected such application on 30.7.2019 with cryptic orders which are challenged in the present proceedings.

9. Mr Karpe appearing for the State would submit that ample opportunities were given to the petitioner and therefore, no interference is required.

10. Records clearly goes to show that PW1 was in the witness box and part cross examination was conducted when the matter was adjourned and thereafter an application was made on behalf of the accused vide Exh. 18 dated 19.11.2018. In this application accused claims that a CD which is part of the chargesheet was not made available to the accused. Request was made to hand over the CD for the purpose of effective cross examination. Learned Public Prosecutor filed her say on the said application claiming that CD is already furnished to the accused. Accordingly, learned Trial Court passed an order disposing of said application on the ground that CD is already furnished to the Advocate for the accused on 12.7.2018 as per order on Exh.11.

11. Oral request was made on that day to adjourn further cross examination of PW1. However, the learned Trial Court refused to adjourn the matter and closed the cross examination of PW1 by recording it in the roznama.

12. Petitioner then filed an application for reopening of evidence of PW1 on 7.6.2019 by giving detailed reasons. In the application it was mentioned that after closing of the cross examination of PW1, victim was under examination and immediately after completion of deposition of victim/PW2, such application was filed. Learned trial Court rejected such application vide order dated 1.7.2019 only on the ground that there is no power to review its own order.

13. Accordingly, petitioner moved an application on 15.7.2019 quoting the Section of 311 of Cr.P.C. has powers to recall witnesses. However, learned trial Court refused such application by cryptic order dated 30.7.2019 which reads as under:-

“Arguments heard perused the records. It is seen that order on Exh. D-23 is clear enough to deal with this issue of recall of PW1 and there is no scope or provision for call of order dated 1.7.2019, passed on Exh. D-22.Hence, this application is rejected.”

14. Fact remains that PW1 was under cross examination and when an application was filed for providing CD, it was expected from the trial Court to give an opportunity to the petitioner to cross examine the witness. Though oral request was made, it was rejected and the cross examination was closed.

15. Only ground which has been pointed out while rejecting the application for recalling of the witness is that said Court is not having power to review its own order.

16. Learned trial Court completely lost the sight of the provision of 311 of Cr.P.C which gives ample power to the Court to recall the witness at any stage or to examine any witness for the effective decision of the matter. By not exercising such power and on observing that it would amount to recall of the earlier order, learned trial Court failed to exercise jurisdiction available with it in proper manner.

17. Recalling of witness for further cross examination on the satisfaction of the Court would not amount to review of its own earlier order. Accordingly, impugned orders passed by the trial Court needs interference. Opportunity is required to be given to the petitioner to cross examine PW1. However, it is made clear that such

cross examination shall be completed as early as possible and preferably on the date which is fixed for the matter on 18.9.2024.

18. Impugned orders are therefore, quashed and set aside. Petitioner is directed to further cross examine PW1 on the date which is now fixed for trial. For that purpose learned trial Court is directed to issue summons to PW1 through Investigating Officer, who shall make it convenient to serve the summons and keep the witness present on that day.

19. Rule is made absolute in above terms.

20. Petition stands disposed of.

BHARAT P. DESHPANDE, J.