

MHRT130013952020**Order below Exh.376 in Sessions Case No.14/2020**

(Passed on 08-09-2023)

1. Read application. Perused say given by Ld. Counsel of accused No.1 and 2. It is seen from the record that in spite of giving sufficient opportunity the Ld. Counsel of accused No.3 has not filed say, on the application Exh.376. Therefore no say order has been passed and application proceeded accordingly. Heard Ld.Counsel of both parties.

2. On going through the record it reveals that the present application is moved by the Ld.APP for issuing summons to the material witness i.e. Ld.JMFC Amaravati who has recorded the statement of the witness Veersingh Chauhan u/s 164 of the Code of Criminal Procedure. It is submitted that the present case is on the verge of completion and only two witnesses yet to be examined i.e. Ld. JMFC and Investigating Officer. According to the prosecution considering the nature and gravity of the offences they have examined maximum possible necessary witnesses, however the material witness of the prosecution PW.26 Veersingh Chauhan turned hostile. In such circumstances it is very much required to examine the Ld. JMFC, as a witness, as he has recorded the statement of said Veersingh Chauhan who turned hostile. In above such circumstances there is no other alternative than to examine

the Ld. JMFC in this case. Hence the Ld. APP prayed for allowing application.

3. The application is strongly objected by Ld. Counsel of accused No.1 and 2 by way of filing say at Exh.378. It is submitted on behalf of the accused that the prosecution has given a sufficient opportunity to examine maximum possible witnesses. The accused No.1 and 2 are undertrial prisoners since long. The Ld. Counsel of accused put emphasis on this aspect that during the bail application No.1369/2020 before Hon'ble High Court, the prosecution has submitted that they have to examine only remaining 4 witnesses namely 1. Dhananjay Yadav, Nodal Officer, 2.Dr.Satyaprakash Balvant, Rural Hospital, Guhagar, 3.Dattatraya More and 4.Shivaji Patil (I.O.). Accordingly they have also submitted report dated 28-01-2023 before Hon'ble High Court and assured before the Hon'ble High Court that in February 2023 the evidence of those 4 witnesses will be completed. Accordingly the Hon'ble High Court considered the said submission as the matter was on the verge of completion. Therefore the bail application of the accused has not been considered at that time. In such circumstances the application is not maintainable hence prayed for rejection of an application.

4. Having regard to the arguments advanced by the Ld. Counsel of both parties and taking into consideration the attending circumstances of the case it is very much clear that the police of Guhagar Police Station registered the offence vide C.R. No.67/2014 under section 302, 394 r/w.34 of Indian Penal Code

against accused Nos.1 to 3. It is a matter of record that the accused being under-trial prisoners therefore my Ld. Predecessor i.e. District Judge Khed immediately framed charge against the accused on 01-07-2015. Accordingly 10 witnesses examined in the Court of District Judge, Khed and thereafter the matter has been transferred to District and Sessions Court Chiplun on 08-03-2020. It is also seen from record that my Ld. Predecessor and myself have on time to time also expedited the matter and completed the evidence of remaining witnesses till 04-08-2023. However on 04-08-2023 the Ld. APP moved the present application vide Exh.376 for giving them an opportunity to examine the material witnesses Ld. JMFC and Investigating Officer accordingly.

5. It is a matter of record that admittedly the accused No.1 and 2 are in jail since long and accused No.3 is on bail since 10-07-2015. Therefore considering the circumstances on record it was and is necessary to expedite the matter in view of direction of Hon'ble High Court. Accordingly it has been expedited which itself reflects from the Roznama. The Ld. Counsel of accused brought to the notice of this Court that in spite of giving sufficient opportunity to the prosecution they have not closed their evidence and again prolonging the matter by examining remaining witnesses. Due to the submission of Ld. APP the bail application of the accused Nos.1 and 2 has not been considered by Hon'ble High Court and therefore the Ld. APP has no right to examine Ld. JMFC as a witness in this case. However it is counter argued by Ld. APP that due to hostility of material witness of the prosecution PW.26

Veersingh Chauhan they have no alternative than to examine the Ld. JMFC who has recorded the statement of said witnesses under section 164 of the Code of Criminal Procedure.

6. In view of submission of Ld. Counsel of both parties and on carefully scrutinizing the entire record it reveals that the matter is on the verge of completion and on examining last two witnesses i.e. the Ld. JMFC and Investigating Officer the prosecution evidence will be closed. As such the offence under section 302 of Indian Penal Code is very serious in nature and the punishment provided for the said offence which is a death or imprisonment for life and shall also be liable to fine. In the light of above discussion and considering the attending circumstances on record at this juncture I would like to take recourse of observation of Hon'ble Bombay High court in case of Ajmat Shaha Vs. State of Maharashtra in Cri.Appeal No.539/2021, in which it is observed that,

‘In case of statement recorded under section 164 of Criminal Procedure Code, there is no legal bar to examine Magistrate to prove relevant facts, touching to recording such statements. If the witness whose statement recorded under section 164 of Cr.P.C. does not support the case of prosecution the public prosecutor at least could have made request to the trial Court to allow him to examine the Magistrate.’

7. In view of above preposition of law and considering the entire circumstances on record I found that PW.26 the material witness of the prosecution denied that his statement under section 164 of Cr.P.C. has been recorded voluntarily. As such

considering the nature and gravity of the offence as well as facts and circumstances of the case I found that if Ld. JMFC can be examined through Video Conferencing by using electronic media the matter will be expedited and no prejudice will be caused to the Ld. Counsel of accused as he will get the opportunity to cross examine the witness. Therefore as the case is on the verge of completion and already expedited by my Ld. Predecessor and myself hence it is necessary to give last opportunity to the ld. APP for examining Ld. JMFC as a material witness of the prosecution. Hence in the interest of justice I am inclined to allow application partly and proceed to pass following order.

ORDER

1. The application is partly allowed.
2. The Ld. APP is allowed to examine Ld. JMFC, Amaravati through video conferencing hence issue summons accordingly.

Chiplun.
Date : 08/09/2023

(Dr.Anita S. Newase)
Additional Sessions Judge,Chiplun.

Certificate

I affirm that the contents of this pdf file are same word to word as per the original.

Case No.	Sessions Case No.14/2020
Name of Court	Additional Sessions Judge, Chiplun
Name of Stenographer	Mrs.VS.Kulkarni
Dictation on computer by P.O.on	08-09-2023
Order signed by P.O.on	11-09-2023
Order uploaded on	11-09-2023