

(1998) 07 BOM CK 0080

In the Bombay High Court

Case No : Misc. Application No's. 358, 359, 360, 361, 362 and 363 of 1998, in Special Case No. 7 of 1993

Hiten Prasad Dalal and others

APPELLANT

Vs

Abhay Dharmasi Narottam and another

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 243, 313, 315, 342
Evidence Act, 1872 — Section 10
Penal Code, 1860 (IPC) — Section 120
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 2
Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Section 6

Citation : (1998) 5 BomCR 822 : (1998) BomCR(Cri) 43

Hon'ble Judges : M.S. Rane, J

Bench : Single Bench

Advocate : Shirish P. Gupte, N.K. Thakore, Prakash Naik, Ms. Bhadra N. Dalal, A.A. Bhore and Amit Desai, instructed by Malvi Ranchhodas and Co, for the Appellant; R.D. Ovalekar and V.G. Pradhan, for the Respondent

Judgement

M.S. Rane, J.—Somewhat queer point is raised by the above named accused-applicants, which Court is required to consider, at such a stage of the trial of the above case, when prosecution has concluded its evidence, in examining as many as its 81 witnesses and has closed its case, recording of statements/explanations of all the 12 accused in this case, including the above applicants-accused u/s 313 of the Cri.P.C. has also been completed. As would be pointed out later on, the point in question is no more res integra in view of the decision of the Apex Court in the case of Tribhuvan nath v. The State of Maharashtra, reported in AIR 1973 S.C.p. 450 directly on the issue. However since 6 out of 12 accused in this case, being applicants named in the title of this judgment have with some amount of seriousness and emphasis urged the said point, that this Court is thrashing out the same, on consideration of the relevant statutory provisions and facts and circumstances as obtained in the matter herein.

2. Point at issue raised and canvassed arises, in the context of and in the light of provisions as contained in section 315 of Cri.P.C. (hereinafter referred to as Code) its scope, amplitude, meaning, implications and consequences and which section gives the right to the accused of examining himself on oath as a witness for his defence in disproof of the charges made against him or any person charged together with him at the same trial. Applicants-accused have questioned and challenged the said right of the accused No. 3 Abhay Dharmasi Narottam in this case who has by written application opted for exercising his right of examining himself as a witness for the defence in disproof of the charges made against him in this case, asserting that they apprehend that the evidence which accused No. 3 proposes to lead is not in disproof of the charges against him, but he is adducing evidence against the co-accused in this case. This is the principle challenge and bone of contention of the applicants-accused.

3. All these applications are being disposed off with a common order. The above named applicants-accused are the accused in Special Case No. 7 of 1993. The reliefs claimed by the said applicants-accused are common. In that, the above named applicants-accused in their respective applications prayed that accused No. 3 Abhay Dharmasi Narottam in this case be not granted permission to examine himself as a witness for his defence on oath which the said accused No. 3 has sought as provided u/s 315 of the Criminal Procedure Code. By and large the grounds for such opposition as contained in all these applications and/or reasons or justifications assigned are similar. Submissions advanced by the Counsel/Advocates of the above respective applicants-accused proceed more or less on identical lines. The provisions of law as also the principles applicable and attracted are also the same. Hence the common order.

4. In all there are twelve accused in this case and they are 1) Mulangi Krishna Swamy Ashokkumar, 2) Hiten Prasan Dalai, Applicant in Misc. Appln. No. 358 of 1998, 3) Abhay Dharmasi Narottam, who has appealed u/s 315 of the Code, 4) Bhupen Champaklal Dalai, applicant in Misc. Appln. No. 359 of 1998, 5) Tejkumar Balkrishna Ruia, applicant in Misc. Appln. No. 360 of 1998, 6) Jagdish Pannalal Gandhi, 7) Chandrashekhar Sitaram Raje and 8) Sudhakar Appu Ail, both applicants in Misc. Appln. No. 361 of 1998, 9) Kishan Kantilal Kapadia, applicant in Misc. Appln. No. 362 of 1998, 10) Madhusudan Sakhamam Kushte, applicant in Misc. Appln. No. 363 of 1998, 11) Shankar Narayan Ramaswamy and 12) Sarenathan Mohan.

5. The case herein has been brought before this Court in exercise of its jurisdictions under the provisions of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

6. The accused herein are charged under various offences collectively as well as individually u/s 120-B of Indian Penal Code r/w section 13(1)(d) r/w 2 and section 13(2) of the Prevention of Corruption Act, 1988 and section 420 or alternatively section 409 and sections 411, 467, 468 and 471 of the Indian Penal Code. Prosecution is equal to the security scam which broke out in May, 1992.

7. The stage of the matter as stated earlier is that, after framing of the charges and recording pleas of the accused as required u/s 240 of the Code the prosecution has also concluded its evidence. The statements/ explanations of all the accused as required u/s 313 of the Code has also been concluded. It is at the stage of examination of accused No. 3-Abhay Dharmasi Narottam under the provisions of section 313 of the Code that he stated before the Court that he wanted to examine himself on oath. This he stated in answer to the question No. 755 put to him under the said provisions of section 313 of the Code. It may be stated that this took place on 6th July, 1998 almost at the fag end of his examination u/s 313 of the Code when circumstances appearing in the evidence led by the prosecution against him were put to him. The accused No. 3 also stated that he wanted to examine his defence witnesses.

8. Thereafter the accused No. 3 moved a written application. The relevant portion of the said application read as under :

"I, Abhay D. Narottam the above named applicant (Accused No. 3)humbly makes the following application :

That I may be allowed to enter as a Defence witness and give evidence under oath to disapprove charges made against me or any person charged together with me, as laid down u/s 315 of Cr.P.C."

By reading the text of the application reproduced above it will be clear that such written request is made u/s 315 of the Code.

9. It is this request of the accused No. 3 that is vehemently opposed by the abovenamed applicants-accused in their applications.

10. For the purpose of convenience and ready reference relevant questions put to accused No. 3 by the Court u/s 313 of the Code are question Nos. 755 and 757 which are reproduced hereinbelow with answers given by accused No. 3 Abhay Dharmasi Narottam before the Court.

"Q. 755. Do you wish to examine yourself as a witness on oath ?

A. Yes, I request to defer my examination on oath at the end i.e. after completion of recording of the statements of other co-accused in this case.

Q. 757. Do you wish to lead any evidence or examine any other witness on your behalf?

A. I will examine some witnesses. I will furnish the list of such witness in the next week i.e. on Monday, the 13th July, 1998."

11. It may be stated that the prosecution herein against all the 12 accused revolves over three transactions in Government Securities between Canbank Financial Services Ltd. and Bank of Karad Ltd. put through on 6-4-1991, 22-7-1991 and 31-7-1991.

12. The charges and alternate charges in this case were framed on 14-11-1995

and 7-1-1997 respectively and when as in the case with other co-accused of this case, same were read over and explained to accused No. 3 -Abhay Dharmasi Narottam, his pleas thereon were recorded vide Exs. 12 and 26 respectively. For the purpose of convenience and ready reference relevant part of said pleas are reproduced hereinbelow :

Ex. 12

"Q. No. 2: Have the charges been read over and explained to you?

A : Yes.

Q. No. 3 : Do you plead guilty to the charge or claim to be tried?

A : Not guilty and claim to be tried."

Ex. 26

"Q. No. 2. Have the alternative/additional charges been read over and explained to you?

A. Yes.

Q. No. 3. Do you plead guilty to the charge or claim to be tried?

A. Not guilty and claim to be tried."

It would be clear from the above pleas of the accused No. 3 that he pleaded non guilty and claimed to be tried. Such pleas of the other co-accused in this case including the applicants-accused hereinabove have also been recorded. The recording of such pleas of the accused followed the trial.

13. The first witness of the prosecution stepped into the witness box on 16-6-1997 and process of recording of the prosecution evidence was concluded on 4-5-1998. Thereafter the statement of all the accused in this case were recorded u/s 313 of the Code.

14. It is necessary to make mention of one important fact. Accused No. 3 Abhay Dharmasi Narottam has been appearing all throughout in person i.e. to say he has not engaged any Advocate to conduct his defence in this case. He himself conducted his defence. He himself cross-examined various prosecution witnesses. This Court, considering the voluminous evidence both oral and documentary as also intricacies and relative niceties pointed out to the said accused No. 3 the desirability that he should engage an Advocate to assist and defend him in this case. However same did not find favour with him. He also did not ask this Court for appointing Advocate to defend him under the State Aid Scheme. What is more that when accused No. 3 stated that he wanted to enter as defence witness and give evidence on oath to disprove the charges levelled against him, u/s 315 of the Code, this Court informed him that the Court was witting to provide him legal assistance by way of amicus curie. However, for the reasons good or otherwise best known to him he declined to avail of the said

offer. The fact remains as stated earlier that accused No. 3 Abhay Dharmasi Narottam all throughout in this case is conducting his defence himself in person.

15. Having briefly adverted to the background and the stage at which the above applications have been made I would briefly advert to the main grounds upon which the above named applicants-accused have sought to oppose accused No. 3 Abhay Dharmasi Narottam to enter into witness box as defence witness for giving evidence on oath as provided u/s 315 of the Code.

16. The said grounds are summarized, which, as stated earlier, are common, as under :

i) Accused No. 3 Abhay Dharmasi Narottam is not the competent witness for the defence so as to give evidence on oath in disproof of the charges made against him by reason of the fact of admission made by him in his explanation offered by him in the statement recorded u/s. 313 of the Code;

ii) It is stressed that because of the admissions made by him there is no scope left for him to disprove the charges made against him as envisaged under the provisions of section 315 of the Code;

iii) It is apprehended, I would say, so strongly expressed and highlighted, by all the applicants with one voice that the said accused No. 3 may give evidence which will be adverse and prejudicial to other co-accused and which would jeopardize their interest/defence;

iv) Therefore the consent of the other co-accused for accused No. 3 for giving such evidence is necessary;

v) Fear and apprehension is expressed that prosecution in the cross examination of accused No. 3, after he gives evidence, may elicit something incriminating against the other co-accused and that will provide an opportunity to the prosecution to fill in the lacuna left in their case. It is submitted that at the threshold itself this Court should clarify that the accused No. 3 be not permitted to give incriminating evidence against the other co-accused and if given the same must not be relied upon and the same should be excluded and ignored;

vi) It is emphasized that accused No. 3 is offering himself to be examined as defence witness with some ulterior purpose, not to lead evidence in his defence for disproving the charges but giving evidence against the co-accused; and

vii) That the Court should impose strict restrictions or fetters upon the scope of the evidence which accused No. 3 proposes to give. In that it is hinted that such evidence should be confined only to his defence in disproof of the charges against him and nothing more.

17. Now, I will advert to the submissions made across the bar. At the outset it may be stated that the submissions made by the Ld. Counsel for their respective applicants-accused are more or less reiteration of what has been stated by the respective applicants-accused in their applications.

18. Mr. Ovalekar, Ld. Counsel for accused No. 2 submitted that section 315 of the Code has to be read along with section 243 of the Code. He submitted that section 243 empowers the Court to examine and scrutinize the application made by the accused to find out whether the same is made for the purpose of vexation or delay or for defeating the ends of justice. He says that interest of other co-accused in the trial should be a paramount consideration and if the accused No. 3 is allowed to give evidence as he has applied for the same is definitely going to prejudice the other co-accused in this case and therefore said request of accused No. 3 should not be granted for allowing him to step into the witness box as witness and give evidence. He submitted that this will not be evidence of the said accused in disproof of the charges but the evidence against other co-accused.

19. He also made reference to the legislative history with regard to section 315 of the Code. He read the reports of Law Commission when section 342-A was incorporated in the old Code of Criminal Procedure which is now section 315 in the new Code of 1973 and submitted that the said section was based on the pattern of criminal administration of justice as is in force in England where the accused himself under the statute of that Country is recognized as competent witness. Whereas this is not the case as far as our country is concerned. He therefore submitted that taking into consideration the conditions and practice as prevalent in our country and various benefits and privileges accorded to the accused in criminal case in trial before the Court of law that such protections and privileges have to be preserved and the Court has to ensure that the same are not taken away by any ingenuous device as done in the instant case.

20. This is in sum and substance the thrust of the submissions of the Ld. defence Counsel Mr. Ovalekar and which line of argument has also been adopted by the Counsel appearing for the other applicants-accused.

21. Accused No. 3 who is appearing in person in reply stated that as mentioned in his application itself he has offered himself as defence witness to lead evidence in disproof of the charges against him and the co-accused. He says that under the statute he is entitled to do so.

22. Mr. Pradhan, Ld. P.P. submitted that section 315 of Cri.P.C. is quite clear and to accept the submissions advanced by and on behalf of the applicants-accused would mean or it would amount that something is being added or read in section 315 of the Code which is not there at all. He says that section 315 of the Code is very clear and leaves no manner of doubt and application which has been presented by accused No. 3 clearly states that he wants to adduce evidence to disprove the charges against him. He therefore says that one cannot launch upon speculating theories and basis or so called apprehensions as what would be the evidence of the accused who will examine himself under the provisions of the said section.

23. Having thus considered divergent contentions advanced in this case it will be useful to examine first the relevant provisions of the statute. Section 315 of the

Code is the section in question and the same being relevant for our purpose is quoted hereinbelow :

"315. Accused person to be competent witness.---(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial :

Provided that -

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial."

The plain reading of the section shows that accused in a criminal trial before the Court has to make application in writing offering himself to be examined as defence witness for himself to disprove charges leveled against him or against any person charged along with him at the same trial. The plain reading of the said section further shows that what is required for availing of the provisions as contained in the said section is (i) that there must be trial in Criminal Court; (ii) person applying to be examined under the provisions of the said section has to be necessarily an accused; (iii) when the stage for invoking the provisions of the said Act had reached i.e. to say after conclusion of recording of the evidence of the prosecution followed by the explanations/statements of the accused as required u/s 313 of the Code is over; (iv) the evidence as such accused may adduce will be on oath and as a witness and lastly (v) such evidence must be "in disproof of the charges made against him or any person charged together with him at the same trial".

24. Now coming to the case in hand it must be stated that the stage when the accused No. 3 had made the application, all these requirements as far as trial in hand is concerned were over and to that extent it may be said that the application made by accused No. 3 u/s 315 of the Code is tenable and within the scope and ambit of the said statutory provisions.

25. The plain reading of the said section would further show that no restrictions or fetters have been imposed save and except that such evidence to be given in defence must be in disproof of the charges, etc. while allowing the accused to be examined on oath. As noticed however, applicants-accused want that the exercise of such right by the accused No. 3, under the provisions of section 315 to be circumscribed as contended.

26. The said section 315 has a legislature history. It is to be noted that till 1955 there was no provision in the Criminal Procedure Code or for that matter practice followed in the administration of justice in this country allowing the accused to offer evidence on oath as a defence witness. This was first time introduced in the year 1955 when in the old Code section 342-A was incorporated by way of

amendment. It needs to be stated and there is no dispute that section 315 as it now appears in the present Code is just copy of the said section. It is to be noted that even in the year 1973 when new Criminal Procedure Code was enacted the legislature thought it fit to keep the said section 315 in the same form as it was and which had remained in operation and force ever since same was introduced in the year 1955.

27. While dealing with apprehension expressed by and on behalf of the applicants-accused, it needs to be stated and emphasized that what section 315 envisages is that when the accused offers himself to be examined on oath he is treated as witness like any other witness examined in any criminal trial which implies that he is subject to the rules and regulations as contained in the Evidence Act and as will be applicable to any other witness. It further follows that the Court when it will record the evidence would certainly consider whether any part of evidence is relevant, admissible or otherwise. What is more, the evidence will be led in open Court in the presence of all concerned including the co-accused. The process of adducing of evidence even in the case of the accused when he steps into the witness box as witness will be also subject to the same rules and regulations as applicable to any other witness.

28. This is clarified just to allay fear or apprehensions expressed by the defence.

29. The second contention raised by and on behalf of the applicants-accused that once the accused No. 3 is allowed to give evidence he may resort to unfair practice and he may adduce the evidence which will be adverse or prejudicial even detrimental to the co-accused. That is to say the evidence adduced may not be in disproof of charges against him but it will be the evidence against the co-accused.

30. Such submission to say the least in my view, at this stage is wholly unjustified and even not tenable and I would say misconceived too. One cannot launch upon the speculative arena as to what the witness is going to say. True it is that in criminal trial the material in the form of statements of prosecution witnesses are recorded u/s 161 of the Cri.P.C. wherefrom all the concerned including the defence would know as to what the witness is going to say. To that extent such advantage would not be available when the accused steps into the witness box. But in my view legislature has taken care of the same when in the said section 315 it is clearly provided that the evidence on oath is "in disproof of the charges".

31. Everyone who are concerned in this case knows what are the charges against the accused No. 3. It is needless to add that when the accused No. 3 will be allowed to lead the evidence this fact will remain foremost germane in the mind of the Court as also other concerned in this matter. Therefore, mere on speculative assumption accused No. 3 cannot be held to be disentitled to avail the benefit of the provisions as contained in section 315 of the Code.

32. The next contention that prior consent of other co-accused has to be there

when accused No. 3 is allowed to lead the evidence, as stated earlier section 315 does not contemplate or envisage any such fetters or restrictions and therefore to accept such arguments would mean to add something which is not in the said statute.

33. The next it is submitted that since the accused No. 3 is appearing in person the Court should impose certain restrictions and fetters upon the scope of evidence which he may adduce in this case. Again this is on speculative assumptions that accused No. 3 is going to bring in his evidence which may not be admissible and permissible in this case under the Rules of Evidence. Furthermore, it would be most unjust and unreasonable to circumscribe the statutory right of the accused on the basis of speculation, particularly when, the statute does not provide for the same.

34. It is not necessary to refer to the various authorities cited by and on behalf of defence as also by the prosecution. It will only suffice to make reference to the decision of the Apex Court in the case of *Tribhuvan Nath v. The State of Maharashtra* (supra). Incidentally the Apex Court was considering in that case the situation as obtained in the matter in hand. The difference is that in that case the accused was allowed by the trial Court to lead his evidence u/s 342-A of the old Code which is now section 315 of the new Code and question was of the credit worthiness of the evidence of such accused. In para 29 the Apex Court has considered the said aspect and has laid down as under :

"29. The first question is whether the trial Judge was right in using the evidence given by accused 3 which he gave as a witness in his defence ? The position with regard to such evidence is that when a person, accused alongwith others voluntarily steps in the witness box as a witness in defence, he is in the same position as an ordinary witness. See *People Insurance Co. Ltd. Vs. Sardar Sardul Singh Caveeshar*, and *Jibachh Shah Vs. The State*, and is therefore subject to cross examination by the prosecution Counsel and evidence brought out in such cross-examination can be used against his co-accused, see *The King v. James Paul* (1920)2 K.B. 183 If such a witness incriminates his co-accused the other accused jointly tried with him has right to cross examine if he wants so to do. *Rex v. Hadwen* 1902 K.B. 882. This has been the position in England after 1898 when accused persons were made competent witnesses. The same consequences must also flow after accused persons have been made competent witnesses for the defence u/s 342-A of the Code of Criminal Procedure. As Counsel for the appellant informed us since accused No. 3 volunteered to enter the witness box as a witness in his evidence he was in fact cross-examined not only by the prosecution but also by Counsel for the other accused. Of course an accused person cannot be compelled to give evidence as prosecution witness in view of the expression "in disproof of the charges" in section 342-A. But once his evidence as a witness for the defence is on record u/s 10 of the Evidence Act, 1872, evidence as to the communications between the conspirator and the other during the time that the conspiracy is going on and relating to implementing that

conspiracy, is relevant evidence. The statements by one accused to another and evidence as to the acts done by him disclosing participation by the other accused in the conspiracy are also relevant. As to whether they merit reliance or not is another question depending upon their credibility."

35. The above paragraph luminously sets out what is the import and the scope of the old section 342-A of the Code which is now section 315 of the new Code needing no further elaboration on this aspect. It also makes crystal clear about the rights of the accused examining as a witness as also of the co-accused, providing fair opportunities to all concerned in such situation.

36. There is one point which would require specific mention while considering the above judgment of the Apex Court. The Apex Court has also taken into consideration section 10 of the Evidence Act since there was charge of conspiracy in that case. As noticed earlier in the case in hand there is also a charge against all the accused of criminal conspiracy as provided u/s 120-B. It is not necessary and also it will not be proper to elaborate this aspect further at this stage but it has to be noted that when accused No. 3 would step into the witness box there being a charge of criminal conspiracy in this case which was also case before the Apex Court the accused No. 3 will have to modulate his evidence bearing in mind the said aspect.

37. There is one more point which would also need advertence and which was specifically urged by and on behalf of applicants-accused. It is submitted that accused No. 3 has rendered himself disqualified being competent witness u/s 315 of the Code. The reasons assigned are that he has already been examined by this Court u/s 313 of the Code and according to the applicants he had admitted the charges against him. That being so, there is no scope left for accused No. 3 to adduce any evidence in disproof of the charge.

38. This aspect need not detain us any longer. The statement/explanation recorded u/s 313 of the Code have different implications in the context of the criminal trial. Section 313 requires what has to be put to the accused, viz. the "circumstances appearing in the evidence against him." Furthermore, while examining accused under the provisions of the said section he has also to be informed that he is not bound to make any statement or answer any question put to him by the Court and even if he gives false answer he will not render himself for perjury. He is not to make statement on oath. Subsection (4) of the said section says that the answer given by him may be "taken into consideration in such enquiry or trial." It may be stated that such riders put upon the answers given by the accused when examined u/s 313 would show the evidentiary value of such statement. Even if the accused one way or the other admits or gives answer in such way suggesting that he has accepted the particular situation put to him, even then the evidence adduced by the prosecution is not found to be adequate enough to prove the guilt, then merely on his so called admission u/s 313 of the Cri.P.C. he cannot be convicted. Although his statement under said section can be taken into consideration in an inquiry or trial it cannot be strictly

construed as evidence in the case. Likewise, in absence of corroboration, statement under this section cannot be utilised against him. That being the position, so called admission by accused No. 3 in his section 313 explanation even if such are there, in my view, would not deprive him of his statutory right u/s 315 of the Code as sought to be urged by the applicants accused. The accused making such statement may also resile at subsequent stage. Section 313 only talks of circumstances against the accused. Whereas if one reads section 315 which is reproduced hereinabove the reference is made to "the charges made against him". The different expressions appearing in section 313 and 315 have to be noted which are very important in the circumstances. To repeat, section 315 refers to the charges whereas section 313 refers only to the circumstances against the accused.

39. Coming to the charges the accused No. 3 when the same were framed and read over and explained to him he has pleaded non-guilty and stated that he is innocent and claimed to be tried. The pleas of the accused No. 3 to that effect have been recorded and form part of the record. This distinct expression in two sections is significant and demonstrates intention of the Legislature. In section 315 the expression used is charge or charges and not circumscribed against the accused. The Legislature with its wisdom and in my view rightly provided such distinctions in section 315. Here the accused No. 3 has clearly stated that he is innocent and has claimed to be tried and in furtherance thereof he is adducing the evidence.

40. I may further add that there is definite underline principles behind the said provision. In a criminal trial, it is imperative for the prosecution to establish its case in accordance with charges levelled against the accused beyond reasonable doubt. For variety of reasons, without imputing any motive, prosecution may not place before the Court all the material relevant in its case in support of charges. Such material kept away may be helpful to the accused in a trial before the Court. It is in such situation, it is reasonable to think, that section 315 of the Code would come into play. Just as the prosecution has to establish and prove its case/charges against the accused, equally it is also to the accused to disprove the charges levelled against him by the prosecution. It is this aim and object that this section 315 of the Code seeks to achieve and statutorily confers the said right upon the accused. It is the same right that accused No. 3 is wanting to exercise, which, it is pertinent to note, is opposed by the applicants herein who are co-accused.

41. Therefore taking into consideration all these facts I do not find any merits in the objection raised or even apprehension expressed by and on behalf of the applicants-accused. No fetters or restrictions can be imposed as have been repeatedly and vehemently canvassed before this Court upon accused No. 3 when he would step into the witness box as witness. Apart from the fact that same will be most unjust and unreasonable it will be contrary to the statute. In as much as, as noticed earlier section 315 of the Code as it reads does not call

for such imposition, or restrictions or fetters as sought to be urged. To do so would be contrary to the statute and will be denying accused No. 3 the exercise of the statutory right. In dispensing criminal justice the Court is conscious of its duty in order to discover the truth and to advance the course of justice in impartial manner. The various provisions in the Code are aimed to ensure that an accused person gets complete and fair trial. It has to strike balance while dealing with conflicting claims. In case in hand, as noticed earlier, the accused No. 3 who is an aged person, is defending himself without aid or assistance of the trained legal expert. That itself, it must be clarified, is no reason or justification to give him different treatment as such which may not accord with rules of procedure and may operate as prejudicial to the other co-accused. As noticed earlier, in this case, he has been exercising his statutory right to examine himself on oath and volunteered to relegate himself to the position of the witnesses, subjecting himself bound to the rules like any other witnesses. This being the position, on so called assumption, apprehension and speculation to deny or deprive him to exercise an option which he has opted for would be most unjust and injudicious. None of the grounds put forth by the applicants-accused justify the grant of relief sought for by them in their above applications. Hence the following order :

- i) Application Nos. 358, 359, 360, 361, 362 and 363 of 1998 stand dismissed.
- ii) Same to be filed.

Notes :

1. At this stage application is made by Mr. Parekh, Ld. Counsel appearing with Mr. Desai for accused No. 5 that accused No. 5 has right to make appeal before the Apex Court against the order of this Court and therefore he should be given time to approach the Apex Court. Similar application has also been made by Mr. Ovalekar and other Counsel appearing for the applicants-accused herein.

2. Ld. P.P. has stated that there is no need to discontinue and adjourn the trial of this case. He says that if the Supreme Court takes different view and makes evidence adduced being not admissible, same can safely be discarded.

3. However, in this case there are certain circumstances which entail this Court to reject the said application. The offences of this case involving over Rs. 350/- crores have taken place in the year 1991 and registered in the year 1992. At various stages, after filing of the charges, applications were made by and on behalf of some of the accused and orders passed thereon were carried right upto the Supreme Court. The trial of this case at last commenced in June, 1997, evidence of the prosecution has been completed and statements of all the accused u/s 313 of the Code have also been over and it is at this stage, out of 12 accused, only accused No. 3 has applied for adducing evidence in his defence. He made it clear as early as on 6th of July, 1998 before the Court that he desired to adduce evidence to the knowledge of the applicants-accused.

4. Accused No. 3 is appearing in person and he is an aged person. Furthermore,

he has complained before this Court that moment he expressed his desire to adduce evidence in his defence he has been receiving threatening telephone calls. So much so that this Court is required to provide him with police protection. He is an aged person. He is appearing in person and not aided and assisted by any Advocate. Therefore taking into consideration all these facts in my view it will not be proper to adjourn the matter which has reached the stage as mentioned earlier. The Court at the same time wishes to clarify that the evidence which the accused No. 3 will adduce will certainly subject to whatever the Apex Court orders or directs. Hence the application for adjournment made by and on behalf of defence for adjournment of further trial stands rejected.

5. Applicants-accused to collect the copy of this order on Monday, the 3rd August, 1998.