
(1999) 10 BOM CK 0013

In the Bombay High Court

Case No : Criminal Application No. 3269 of 1992

Kamlakar Atmaram Kadu and others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 243, 243(2), 313
Penal Code, 1860 (IPC) — Section 323

Citation : (1999) 10 BOM CK 0013

Hon'ble Judges : S. S. Parkar, J

Bench : Single Bench

Advocate : Milind Sawant with Rajiv L. Patil and Ms. Seema Sarnaik, for the Appellant; S. G. Rajput, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

S. S. Parkar, J.—This petition is filed for quashing the order of the learned JMFC, Panvel rejecting the application made by the petitioners-accused to examine the Investigating Officer u/s 243(2) of the Criminal Procedure Code.

2. The prosecution was initiated against the petitioners for the alleged offence u/s 323 of Indian Penal Code on the complaint lodged with the police. The evidence of the prosecution witnesses was led and, thereafter, the petitioners-accused were examined u/s 313 of Criminal Procedure Code. Thereafter an application was made on behalf of the petitioners-accused to summon the Investigating Officer for the purpose of bringing on record the contradictions or the omissions in the evidence of the prosecution witnesses. It is stated in the petition that the Investigating Officer was not examined and, therefore, the accused had no opportunity to bring on record the omissions and contradictions of the prosecution witnesses before the Court. For that purpose an application was made on 20-7-1992 which was dismissed by the learned JMFC, Panvel by his order dated 15th September, 1992.

3. From the perusal of the order it is clear that the application of the accused

was dismissed on the ground that when the accused were called upon to enter upon their defence they replied in the negative stating that they did not want to examine any defence witness and that there was no question of summoning any witness u/s 243(2) of the Criminal Procedure Code.

4. The learned JMFC was obviously in error in rejecting the said application. Sub-section 2 of section 243 of Criminal Procedure Code not only empowers but mandates the Magistrate to issue process for compelling the attendance of any witness for the purpose of examination or cross-examination or for production of any document or other thing on the application made by the accused, unless the Magistrate considers that such application should be refused on the ground that it was made for the purpose of vexation or delay or defeating the ends of justice, which ground has to be recorded in writing. Such application can also be rejected under the proviso to the said sub-section if the accused had already cross-examined the said witness or had an opportunity of cross-examining him before entering on his defence. None of the exceptions provided in the said sub-section or in proviso thereto is obtaining in this case. It is the case of the accused that the Investigating Officer was not examined at all in this case and, therefore, the accused was entitled to apply to secure attendance of the Investigating Officer for the purpose of either his examination or cross-examination. The trial Court was, therefore, undoubtedly in error in rejecting this application. Therefore, the present petition deserves to be allowed.

5. In the result the petition is allowed and rule is made absolute in terms of prayer clause (b). The application made by the petitioners dated 20th July, 1992 is allowed. In view of the delay in the proceedings due to the operation of the stay granted by this Court, further proceedings in Criminal Case No. 77 of 1990 in the Court of JMFC, Panvel are expedited.