
(2014) 06 BOM CK 0182

In the Bombay High Court

Case No : Criminal Writ Petition No. 51 of 2014

Mahanand Naik

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313, 482

Citation : (2014) 3 BomCR(Cri) 465

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

**Advocate : S. Pinto and Dolorosa Chiquita Tulkar, Advocate for the Appellant;
S.R. Rivankar, P.P, Advocate for the Respondent**

Final Decision : Disposed Off

Judgement

A.R. Joshi, J.—Rule. Rule made returnable forthwith by consent of the parties. Learned Public Prosecutor waives service for the respondents. Present writ petition is preferred under the provisions of Article 227 of the Constitution of India and section 482 of the Criminal Procedure Code. What is challenged in the present petition is the order passed by the Sessions Court, North Goa in Sessions Case No. 46/2009 dated 11/6/2014. By the said impugned order, the present petitioner/accused was not allowed to recall the prosecution witness No. 10 for further cross-examination on various counts. Firstly, on the count that all the prosecution witnesses were already examined and the case was closed. Secondly that statement of the accused u/s 313 of the Criminal Procedure Code was also recorded. Thirdly that the matter was fixed for final arguments and fourthly, that cross-examination of PW10, that is Special Executive Magistrate was taken by the competent lawyer who was appointed under the legal aid scheme.

2. The grievance of the present petitioner/accused is that there was no proper cross-examination of the Special Executive Magistrate, PW10. The said PW10 had recorded the confession statement of the present petitioner/accused u/s 164 of

the Criminal Procedure Code after complying with the relevant provisions. During the arguments, learned Counsel for the petitioner brought attention of this Court to the relevant provisions in the Criminal Manual concerning the manner in which statements u/s 164 of the Criminal Procedure Code are required to be recorded. It is brought to the notice of this Court that certificate No. 1 which is a part of the exhibited document before Sessions Court is in English and is typewritten, but actually it should have been in the handwriting of the Magistrate. After reading of the said exhibit and after going through the contents of the said document in the opinion of this Court there is no need, much less legal necessity, to recall PW10 for further cross-examination. This aspect can very well be reagitated by the applicant before the trial Court during the arguments. Secondly, this Court has gone through the evidence led before the Court by the prosecution by way of examination-in-chief and cross-examination of PW10. Also this Court has gone through the reasoning given by the Sessions Court while disallowing the application for recalling PW10. Under the writ jurisdiction of this Court it is not warranted that PW10 is required to be recalled by allowing the prayer in the present writ petition. Under these circumstances, the rule stands discharged. The present petition is accordingly disposed of.