

(2015) 07 BOM CK 0132

In the Bombay High Court

Case No : Criminal Writ Petition No. 4712 of 2014

Niwas Keshav Raut

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 294, 294(1)
Penal Code, 1860 (IPC) — Section 306, 498-A

Citation : (2015) 4 BomCR(Cri) 397

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : V.R. Gaikwad, for the Appellant; A.A. Mane, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J—Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. By this petition, the petitioner, who is an accused facing prosecution for the offences punishable under Sections 498-A and 306 of Indian Penal Code, prays for quashing and setting aside of the order dated 17.10.2014 passed by the learned Sessions Judge, Satara, allowing the application vide Ex.27 of the prosecution for filing of one document, a chit, alleged to be under the hand writing of deceased Savita, during the course of evidence of prosecution witness P.W.1 Ramesh Shinde.

3. It so happened that on 22.9.2014, P.W.1 Ramesh Shinde was being examined as a prosecution witness by the prosecution, when at the close of his examination-in-chief, P.W.1 Ramesh Shinde deposed before the Court that on last Saturday, i.e. on or about 20.9.2014, he discovered one chit from the case of spectacles of deceased Savita and on reading its contents, he found that the contents furnished some proof in support of the prosecution case against the

accused. Therefore, on the request of learned APP, the further examination-in-chief of the witness was deferred and the learned APP filed an application vide Ex.27 seeking permission of the Court to produce the chit before the Court. The application was strongly opposed by the accused on the ground that there was no provision under law which allows a witness to produce a document before the Court in this fashion and also on the ground that allowing of the application would cause prejudice to the defence of the accused.

4. Upon hearing the prosecution as well as learned counsel for the accused, learned Sessions Judge found that no prejudice would be caused to the accused as the document sought to be produced was at the time when examination-in-chief was not over and cross-examination was just to commence and that there was no provision under the law in not allowing such an application. The order was passed by the learned Sessions Judge on 17.10.2014 and it is this order which has been challenged in the present writ petition.

5. I have heard learned counsel for the petitioner and learned APP for the State. I have carefully gone through the impugned order as well as the relevant documents filed along with the paper-book, with the assistance of learned APP and learned counsel for the petitioner.

6. Learned counsel for the petitioner submits that there is no provision under law which allows the prosecution to file before the Court a document on record at the time of recording of evidence of prosecution. He submits that once the charge-sheet is filed and the prosecution case reaches the stage of recording of evidence, under Section 294 of Code of Criminal Procedure, a document cannot be filed by the prosecution before the Court. He places his reliance on the case of State of Maharashtra Vs. Ajay Dayaram Gopnarayan and Nitin Nandkishor Gudadhe, (2014) ALLMR(Cri) 2141 : (2014) 2 BomCR(Cri) 40 , decided by the Division Bench of this Court.

7. According to learned APP, there is no provision in law which prohibits the prosecution from filing before the Court a document which would be supportive of its case against the accused and that Section 294, Cr.P.C., is only a procedural provision which regulates the manner in which a document can be filed before the Court and also the way it should be admitted in evidence and nothing more. She further submits that this procedure, as seen from the impugned order, has already been followed by the prosecution in this case and, therefore, according to her, there is no merit in the present writ petition.

8. So far as Section 294, Cr.P.C., is concerned, I must say that learned APP is right when she submits that Section 294 is a procedural provision which lays down that as to how and when a document can be admitted in evidence or can be required to be proved in accordance with law. It only says that where any document is filed before any Court by the prosecution or the accused, the particulars of such document should be included in the list and thereafter the prosecution/defence should be called upon to admit or deny the genuineness of

such a document. It lays down that the document must be produced before the Court along with the list of documents so that it becomes known to the other side as to which document is sought to be produced before the Court and how the document should be met or considered by way of resistance or admission. Sub-section (3) of Section 294 prescribes that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding.

9. In the case of *Ajay*, supra, the Division Bench of this Court, while interpreting Section 294 of Code of Criminal Procedure, observed that Section 294 requires that particulars of the document sought to be filed in the Court must be included in the list and the documents which are not included in the list, as contemplated by Section 294(1), cannot be put forth for admission or denial nor can be exhibited or read in evidence without proving them as per law.

10. Thus, the Division Bench is of the opinion that what Section 294 does is to regulate the procedure of filing of a document before the Court and the treatment that it must receive from the Court.

11. The significant aspect of Section 294 Cr.P.C., one must note, is that it nowhere places any embargo upon the prosecution or accused to file a document at a stage subsequent to filing of the charge-sheet. It only says that if any document is sought to be produced before the Court, it should be included in the list of the documents and then the other side should be called upon to either admit or deny the genuineness of the document. It means by necessary implication that a document can be filed subsequent to filing of charge-sheet subject to following the procedure prescribed in Section 294. Then, it is not necessary for the accused, who is called upon to admit or deny the document, to choose either of these options and he may simply keep silence in respect of the document which may as well be an expression of his fundamental right under Article 20(3) of the Constitution of India which says that no person accused of any offence shall be compelled to be a witness against himself. In case the accused chooses to deny the document or just remains silent in that regard, the document cannot be admitted in evidence and it would be required to be proved in accordance with law, having regard to the right of the accused under Article 20(3) of the Constitution of India. However, when the prosecution, which is called upon by the accused, to admit or deny the document, does neither of the things and chooses to stay put with the document, a different situation would arise. In such a case, perspective of the right would change from that of fundamental to procedural, for, Article 20(3) is available to only those persons who are accused of any offence and not to those who allege commission of offence by others. Therefore, a criminal Court would have to meet silence of the prosecution in respect of a document in a different way, depending on the nature and contents of the document and the law of proof of documents applicable to the fact situation. In other words, facts of each case would trigger the effect of prosecution silence under Section 294 of Code of Criminal Procedure. Having

analysed Section 294, Cr.P.C., so, let us now examine the impugned order for its congruence to law or otherwise.

12. On perusal of the impugned order, I find that the afore-stated requirements of law have been followed by the learned Sessions Judge. He has considered the fact that as cross-examination has not begun there would be no question of causing of any prejudice to accused, and rightly so. He has observed that so far as the proof and effect of the document is concerned, same would have to be gone into at an appropriate stage, which again cannot be said to be a view standing opposite to law. Therefore, I find neither any illegality nor arbitrariness in the impugned order. There is no merit in the present writ petition and it deserves to be dismissed.

13. Writ petition stands dismissed. Rule is discharged.