

(2023) 01 BOM CK 0125

In the Bombay High Court

Case No : Criminal Writ Petition No.628 Of 2022

Raju Zita Pawar

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 31-01-2023

Acts Referred:

Evidence Act, 1872 — Section 145

Citation : (2023) 01 BOM CK 0125

Hon'ble Judges : G. A. Sanap, J

Bench : Single Bench

Advocate : A. C. Jaltare, A. R. Chutke

Final Decision : Allowed/Disposed Of

Judgement

G. A. Sanap, J

1. Heard.

2. RULE. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

3. In this writ petition, challenge is to the order dated 3. 06.2022, passed by the learned Judicial Magistrate First Class, Court No.4, Chandrapur, whereby the learned Judge was pleased to reject the question put to witness No.3 on the basis of the documents mentioned in the list at Exh. 21. It is seen on perusal of the question that this witness was sought to be confronted with the contents of the documents part of the list at Exh. 21. Learned Judge did not allow this question in the cross examination on the ground that Section 145 of the Indian Evidence Act, 1872 (For short 'the Evidence Act') does not permit the cross examiner to confront or contradict witness with any material except the previously recorded statement of the witness.

4. It is apparent on the face of the record that with the list at Exh. 21 eleven documents were produced on record. It is not clear from the cross examination

as to how this witness was concerned with all these documents. As per Section 145 of the Evidence Act, the witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to the witness, or being proved. It further provides that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. It, therefore, goes without saying that the witness cannot be confronted or contradicted with the statement of third person. It needs to be stated that when it is proposed to contradict the witness with his previous statement, the procedure provided under Section 145 of the Evidence Act must be followed.

5. In this case, surprisingly the cross examiner did not take proper care to bring on record the material or the statements contained in the documents directly concerned or prepared by the witness. It appears that witness was sought to be contradicted with eleven documents obtained by the accused on the Right To Information Act, 2005. The Advocate, conducting the cross examination, was required to take care and bring on record the statement directly attributable to the witness. It is further pertinent to note that same mistake has been committed by the learned presiding officer. Learned Judicial Magistrate First Class ought to have taken the question put to the witness into consideration and passed the detailed order.

6. The scope of the cross examination is very wide. However, the questions put in the cross examination must be relevant. The questions touching the contents of the documents must be specific and clear. In this case, neither the defence Advocate nor the learned Magistrate has taken proper care. This has resulted into an error apparent on the face of record. The outright rejection of the writ petition in the fact situation would cause prejudice to the accused in his defence. The accused is facing serious charges. Therefore, the order in question would be required to be set aside.

7. Accordingly, the writ petition is allowed.

8. The order dated 03.06.2022, passed by the learned Judicial Magistrate First Class, Court No.4, Chandrapur is accordingly set aside.

9. The learned Advocate for the accused is permitted to conduct further cross examination strictly in terms of the provisions of Section 145 of the Evidence Act. It is made clear that the PW-3 shall not be allowed to be confronted or contradicted with statement of any other person. He can be contradicted and confronted only with the statements attributable to him.

10. The writ petition stands disposed of.

11. Rule is made absolute in the above terms.