

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL WRIT PETITION NO. 9 OF 2015.

YUVRAJ S/O RAJDHAR KOLI & OTHERS.
VERSUS
THE STATE OF MAHARASHTRA & OTHERS.

Appearance =>

Mr. Vijay Sharma, Advocate for the Petitioners.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra.

Mr. Madhav Bhokarikar, Advocate for Respondent No.2.

CORAM : V.M. Deshpande, J.

DATE : 5th August, 2015.

Per Court :-

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

[2] By the present Writ Petition, the Petitioners who are languishing in jail since February, 2013 and facing Sessions Case No.312 Of 2014 are challenging the cryptic order dated 8th December, 2014 passed by the learned Additional Sessions Judge, Bhusawal, District – Jalgaon below Exhibit – 62 in Sessions Case No.312 Of 2014, by which the learned Judge has allowed the application filed by Respondent No.2 – original Complainant and called Shaligram Mango Beldar and Ratilal Tulshiram Beldar, as a witnesses.

[3] The present Petitioners are the accused in Sessions Case No.312 Of 2014. Various witnesses are examined before the court. From the notes of argument submitted by the present Petitioners before the learned trial court, it appears that, evidence of Medical Officer and the Investigating Officer is remained to be recorded. This statement is not disputed either by the learned Additional Public Prosecutor and Mr. Madhav Bhokarika, learned counsel for Respondent No.2.

[4] At such belated stage, the application under Section 311 of the Code of Criminal Procedure is filed by Respondent No.2. Said application was not moved by the learned Public Prosecutor. The said application is at Exhibit – 62. From the said application, it is clear that the persons who are intended to be examined as eye witnesses, their statements are not recorded by the Investigating Officer, during the course of investigation. Further their names are also not cited as witnesses in the charge sheet. The application as conspicuous by its absence in not giving any reasons as to how the testimony of those two persons will be relevant in dispensation of justice. Further, though the said application was objected by the petitioners, impugned order dated 10th December, 2014 shows total non application of mind, even on the part of the learned Judge of the court below and no reasons are given, as to how evidence of those two persons would be necessary for the fair trial and just decision of the matter.

[5] In one of the authoritative pronouncement of the Hon'ble Apex Court in case of Rajaram Prasad Yadav V/s. The State of Bihar & Ors., reported in AIR 2013 Supreme Court, 3081,

guidelines are laid down by the Hon'ble Apex Court in respect of dealing with application filed under Section 311 of the Code of Criminal Procedure.

[6] Present case, in my view does not fall in any of the guidelines those are laid down by the Hon'ble Apex Court. In that view of the matter, I pass the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 8th December, 2014 passed by the learned Additional Sessions Judge, Bhusawal, District – Jalgaon below Exhibit – 62 in Sessions Case No.312 Of 2014 is hereby quashed and set aside.
- (iii) Rule is made absolute accordingly.

(V.M. DESHPANDE, J.)