

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 597 of 2015

Yogesh s/o. Changdeo Somase,
Age : 31 years,
Occupation : Agriculture,
R/o. Derhal, Taluka : Gangapur,
District : Aurangabad.

.. Petitioner.

versus

The State of Maharashtra.

.. Respondent.

.....

Mr. S.G. Ladda, Advocate, for the petitioner.

*Mr. S.D. Kaldate, Additional Public Prosecutor,
for the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 7TH MAY 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. S.G. Ladda for the petitioner and learned APP
Mr. S.D. Kaldate for the respondent - State.

2. Rule. Rule made returnable forthwith. By consent, heard
finally.

3. The petitioner herein is an accused in Sessions Case No. 52/2012, pending before Additional Sessions Judge, Vaijapur [District : Aurangabad]. The petitioner herein is facing the trial for offences punishable under Sections 498A, 307, 323, 504, 506, read with Section 34 of Indian Penal Code.

4. The prosecution examined witnesses to bring home the guilt of the accused. The prosecution then filed evidence close Pursish. The learned Court has recorded statement of the accused under Section 313 of the Code of Criminal Procedure, 1973. Thereafter, the petitioner herein had filed an application before the learned Court, seeking permission to examine five defence witnesses. The application was filed on 20th March 2015. The learned Court was pleased to issue summons on payment of process fees, with a direction that the accused shall cause positive service and keep the witnesses present before the Court on the next scheduled date. The summons were issued to all five witnesses. However, only three witnesses were served with the said summons. The next scheduled date was 23rd April 2015. On 23rd April 2015, the accused / petitioner was constrained to file an application seeking adjournment on the ground that the defence witnesses proposed by the accused were attending a marriage in the village and, therefore, had expressed their inability to report to the Court on the scheduled date. The learned Court had found this exercise as delaying tactics. The learned Court had refused to grant an adjournment to enable the accused to examine any defence witness, by an order dated 23rd April 2015. Hence, this Writ Petition.

5. The learned Counsel for the petitioner fairly submits that the

accused / petitioner had expressed his inability to keep the witnesses present due to inevitable circumstances and that, by rejecting said application seeking adjournment, the accused would lose an opportunity to defend himself fairly at the trial and it would result in miscarriage of justice. The learned Counsel fairly submits, upon instructions, that the accused had no intention of protracting the proceedings in any manner. In any case, only three witnesses were served with the summons and the other two witnesses, who were permitted to be examined as defence witnesses, have not received the summons and, therefore, the learned Court ought to have granted fair opportunity to the accused to examine the defence witnesses.

6. Taking into consideration the submissions advanced across the Bar and the facts of the case, this Court is inclined to allow the petitioner to examine five defence witnesses. The learned Counsel for the petitioner, upon instructions, submits that in the second week of June 2015, on any given date by the Sessions Court, the accused would keep the defence witnesses present and make every endeavour to examine them on the given date.

7. In the result, the petition is allowed.

(A) The order dated 23rd April 2015, passed by the Additional Sessions Judge, Vaijapur [District : Aurangabad], below Exhibit 102 in Sessions Case No. 52/2012, is quashed and set aside.

(B) The petitioner herein shall examine the defence witnesses who have

(4)

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been served with the summons, on any scheduled date given by the Sessions Court, after 15th June 2015.

8. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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