

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 930 OF 2015
in
CRIMINAL APPLICATION NO. 905 OF 2015

Sagar Dyaneshwar Mule & Anr.	...	Applicants
vs.		(Orig. Accused)
The State of Maharashtra	...	Respondent

Ms. Apeksha Vora, Advocate for the applicants.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 30th October, 2015.

P.C.

Not on board. Upon production, taken on board.

2. Learned APP waives service for the Respondent.
3. The accused – Prakash Gopal Jadhav, who is original accused No.1 in Sessions Case No.637 of 2012, had filed an application before this Court that he has been denied legal aid. He is seeking a direction that he shall not be provided with any legal aid/amicus curiae. That he desired to conduct the trial all by himself. This Court had considered, that accused has a valuable right to conduct his trial, more so because he would be well aware of the facts of his own case. However, in this present case, there are

three other accused persons. The original accused Nos. 2 and 4 have engaged Advocate Ms. Apeksha Vora to espouse their cause. Accused No.1 who is conducting the trial himself is cross-examining the witnesses at length.

4. By an order dated 29.9.2015, this Court, in the interest of justice, had permitted accused No.1 to examine and cross-examine witnesses. In para 6 of the said order, it was made clear that the prayer to cross-examine witnesses in part/in full/in self satisfaction was rejected. This court had directed that the trial be conducted in accordance with law and within the four corners of the Indian Evidence Act. The Criminal Jurisprudence contemplates that the Presiding Officer/Sessions Judge cannot be a silent spectator to the process of conducting the trial. That the trial has to be conducted under his control. It would be his duty to consider the relevant and irrelevant cross-examination. It is the bounden duty of the Court to protect the interest of the prosecution as well as the party before the Court. The Court cannot permit one accused to cross-examine the witnesses to the detriment of the co-accused.

5. The learned counsel for the applicants submits that the case is

not within the control of the Presiding Officer. That irrelevant questions are being put to the witnesses. Without there being any foundation, the accused is making a contrary attempt to implicate the co-accused to create evidence against them through cross-examination of the witnesses. The learned Sessions Judge shall if necessary not only control the lengthy cross-examination of the accused No.1 but in the interest of justice shall also exercise his judicial discretion to deny him further cross-examination. However, in the course of doing so, the learned Judge shall protect the accused No.1 also and permit him to cross-examine only on the material which is available in the charge sheet. Besides the material in the charge sheet, accused No.1 may be at liberty to cross-examine the witnesses on any particular material **to defend himself** only but not to the detriment of co-accused.

6. It appears from the records that it is difficult for the Sessions Judge also to control the accused No.1. Although the accused No.1 has a fundamental right to conduct his trial and cross-examine witnesses in accordance with law. He cannot be given liberty to waste judicial time and the learned Sessions Judge shall take appropriate action against accused No.1, if necessary.

With these directions, the application stands disposed of.

7. Authenticated copy of this order be made available to the parties.

(SMT.SADHANA S.JADHAV, J.)