

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION No. 401 OF 2014

1. Naresh @ Narendra Domaji Wankar,
aged about 40 years,
r/o Shankarpur, Tahsil Chimur,
District Chandrapur.
2. Arun @ Tobal Shriram Chandankhede,
aged about 38 years,
r/o Ward No. 3, Shankarpur,
Tahsil Chimur, District Chandrapur.
3. Shrikrushna @ Molyaa Manohar Khiradkar,
aged about 38 years,
4. Sau. Savita Gangadhar Choudhari,
aged about 45 years.
5. Nitin s/o Madhusudam Sawarkar,
aged about 35 years.
6. Akram Baccamyia Sheikh,
aged about 45 years.
7. Sundhir Madhukarrao Katwalkar,
aged about 39 years.
8. Baldeo Manoharrao Khiratkar,
aged about 32 years.
9. Satish s/o Manoharrao Warjurkar,
aged about 43 years.
10. Mahesh s/o Govindrao Yelshettiwar,
aged about 45 years.
11. Suresh Domaji Wankar,
aged about 60 years.

12. Shivpalsingh @ Babu Harisingh Chandel
13. Smt. Mangala @ Durga Dhudhram Meshram,
aged about 45 years.

All Nos. 3 to 14 are r/o Ward No. 2,
Shankarpur, Tahsil Chimur,
District Chandrapur.

.... **PETITIONERS.**

VERSUS

State of Maharashtra,
through P.S.O. Bisi,
Tahsil Chimur,
District Chandrapur.

... **RESPONDENT.**

.....
Mr. M.P. Kariya Advocate for the Petitioners.
Mr. M.M. Aekare, A.P.P., for the Respondent.

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CORAM : S.B. SHUKRE, J.

DATED : 07.01. 2015.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. By this petition, the petitioners have sought clubbing and trying together of two criminal cases, being (i) Special Case No. 6 of 2008 (old case No. 12/07) and (ii) Regular Criminal Case No. 55 of 2007. The first case is pending before the Special Court and arises out of Crime No. 40 of 2005 registered against the petitioners on the basis of a complaint lodged by Sumanbai Rangari. The second case pending before Court of

Judicial Magistrate First Class arises out of Crime No. 42 of 2005 registered on the basis of a complaint filed by petitioner no. 9 against Avinash Manikrao Dhok and 13 other persons including Suman Rangari. According to petitioners, the incidents involved in both the said crime numbers arise out of the same transaction pertaining to taking out of procession by Suman Rangari and Meerabai Gajbhiye in celebration of they being elected as Sarpanch and Up-Sarpanch of Gram Panchayat Shankarpur in the year 2005 and, therefore, interest of justice would require that both these cases were tried together and disposed of by a common judgment. Accordingly, the petitioners filed an application before the Special Court, Warora in Special Case No. 6 of 2008 arising out of Crime No. 40 of 2005 for calling for the record of Criminal Case No. 55 of 2007 pending before the Court of J.M.F.C., Chimur, and trying the case together with the sessions triable case. The application was rejected by the learned Special Judge by his order passed on 27.3.2014 holding that both the incidents related to different transactions. Being aggrieved by the same, the petitioners have filed the present petition before this Court.

3. According to learned counsel for the petitioners, both the incidents involved in Crime Nos. 40 of 2005 and 42 of 2005 arise out of the same transaction which was of taking out of the procession to celebrate the election of Suman Rangari and Meera Gajbhiye to the posts of Sarpanch and Up-Sarpanch. He submits that though Crime No. 42 of

2005 (FIR) does not refer to the said procession, there are witnesses who are referring to the procession and that apart both the incidents have taken place at one and the same time and that some of the witnesses as well as some accused persons are common in both the crimes. Therefore, according to him, this was a fit case for clubbing together of both the cases. He also submits that if both the cases are not clubbed together and allowed to be tried by separate Courts, there is a possibility of recording of conflicting verdict by two courts which will cause prejudice to the valuable rights of both the parties to prove themselves as innocents.

4. According to learned APP, the places of incidents were different and even the allegations made in both the F.I.Rs. disclosed prima facie registration of offence on different sets of facts. He submits that even though time of both the incidents has been stated to be same and even though some of the witnesses and some of the accused are common, both the incidents are based upon different sets of facts and do not have co-relation with each other and, therefore, no case has been made out by the petitioners for clubbing together of both the aforesaid cases. All these facts have been appropriately considered by the learned Special Judge and, therefore, there is no room for any interference with the said order passed by the learned Special Judge, so submits learned APP.

5. Upon going through the contents of F.I.R. in Crime Nos.

40/05 and 42/05 and also the impugned order, I find that the learned APP is right when he submits that the incidents narrated in the said F.I.Rs. pertain to different transactions, and thus I find no merit in the submission of learned counsel for the petitioners.

6. Bare perusal of both the F.I.Rs. is enough to reach a conclusion that the allegations in these F.I.Rs. arise out of different settings and have different context. In Crime No. 42/05, there is no mention whatsoever regarding taking out of procession on account of election of Suman Rangari and Meera Gajbhiye to the posts of Sarpanch and Up-Sarpanch, and whereas in Crime No. 40/05 there is specific mention about the background and the reasons that sparked the incident in that crime. This background was of election to the posts of Sarpanch and Up-Sarpanch and the procession taken out to celebrate the same. The incident in Crime No. 42/05 has taken place in the house of complainant Satish Warjurkar whereas the incident in Crime No. 40/05 has taken place on street in front of Bajrang Medical Stores. While F.I.R. recorded in Crime No. 40/05 alleges motive for commission of the crime by the accused persons therein, the F.I.R. recorded in Crime No. 42/05 alleges no motive for commission of the crime alleged against the accused persons therein. Therefore, it is obvious that both the incidents have different contextual settings and different reasons for their occurrence and, as such, by no stretch of imagination, could they be said to be arising out of one and the same transaction.

7. Of course, these observations are based upon prima facie consideration of the material placed on record at this stage and would not have any bearing when the cases are decided on their own merits. But, for the purpose of deciding this petition, fact remains that the incidents have no co-relation with each other and having different background as well as fact situations, would not allow themselves to be clubbed together for their being judicially adjudicated upon together and simultaneously. In such a situation, question of coming of verdicts in conflict with each other does not arise.

8. In these circumstances, I find no fault nor any illegality in the order passed by the learned Special Judge. If the two incidents are entirely different in nature, commonness of some of the witnesses and some of the accused persons would not be enough for allowing of an application filed for clubbing together of the two cases. Writ petition is, therefore, devoid any merit and deserves to be dismissed.

9. The writ petition stands dismissed. Rule is discharged.

JUDGE

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