

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

CRIMINAL WRIT PETITION NO.211 OF 2016

1. Sher Khan s/o Anwar Khan,
Age 32 years, Occu. Business
R/o Galli No.4, Indira Nagar,
New Baijipura, Aurangabad
Taluka and District Aurangabad
 2. Jaffar Khan s/o Anwar Khan,
Age 36 years, Occu. Business,
R/o Galli No.4, Indira Nagar,
New Baijipura, Aurangabad
Taluka and District Aurangabad
- ..Petitioners

Versus

- . The State of Maharashtra,
Through Jinsi Police Station,
Aurangabad
- ..Respondent

Mr Shrikant S. Kulkarni, Advocate for petitioners
Mr S.G. Karlekar, A.P.P. for respondent

CORAM : V.K. JADHAV, J.

DATE : 3rd August 2016

PER COURT

Heard both sides.

2. Being aggrieved by the order passed by learned Additional Sessions Judge, Aurangabad below Exh.13 in Sessions Case No.197/2009, the original accused Nos.1 and 2 have preferred this petition.

3. Brief facts, giving rise to the present writ petition are as follows:

4. The petitioners-original accused Nos.1 and 2 were charge-sheeted by Jinsi Police Station, Aurangabad for the offences punishable under Sections 302, 201 read with Sec.34 of Indian Penal

Code vide Crime No.I-19/2009. In due course, the case was committed to the Sessions Court for trial and it was registered as Sessions Case No.197/2009. During pendency of the said case, the petitioners-original accused Nos.1 and 2 filed application Exh.13, for discharge from the case on various grounds, as mentioned in the application Exh.13. Learned Additional Sessions Judge, Aurangabad, by impugned order dated 22nd July 2015, rejected the application. Hence this writ petition.

5. Learned Counsel for the petitioners submits that the learned Additional Sessions Judge, Aurangabad has not given an opportunity of being heard to the petitioners and rejected the said application in the absence of the petitioners and their Counsel with one line order that there are sufficient grounds to proceed. Learned Counsel for the petitioners, by bringing attention of this Court to the copy of the *Rojnama* submits that even though the said application Exh.13 came to be filed on 8th February 2012, the same came to be adjourned till passing of the impugned order without any fault on the part of the petitioners-original accused Nos.1 and 2. He submits that however, on 22nd July 2015, though the Counsel was present in the Court premises, he could not reach to the Court when the matter was called out and the impugned order came to be passed by the Court.

6. Learned A.P.P. submits that the said sessions case is quite old one. Even though the petitioners-original accused Nos.1 and 2 filed the said application Exh.13 in the year 2012, till the year 2015, the said application was not prosecuted by the petitioners. Even, on the date of passing of the impugned order, the petitioners as well as their

Counsel remained absent before the Court. Learned Additional Sessions Judge has gone through the application and the police papers and observed that there are sufficient grounds to proceed against the petitioners-original accused Nos.1 and 2 and accordingly, rejected the application. No interference is required, as there is no substance in the writ petition. Writ Petition deserves to be rejected.

7. On perusal of the copy of *Rojnama*, it appears that though the application Exh.13 came to be filed on 8th February 2012, the State has not filed its say till 28th May 2012 and, therefore, the learned Judge has passed the order that the application to proceed without say of the State. Even, till passing of the impugned order, the State has not bothered to file any say to the application Exh.13. It further appears from the *Rojnama* that though the accused and their Counsel were present before the Court, for one or another reason, the case was adjourned for hearing on application Exh.13 without any fault on the part of the petitioners-original accused Nos.1 and 2. The petitioners have raised certain grounds in application Exh.13. Thus, opportunity of being heard is required to be given to them before deciding their application Exh.13.

8. Learned Counsel for the petitioners-original accused Nos.1 and 2 submits that the petitioners-original accused want to amend the application Exh.13 since the fresh charge-sheet has been filed by the C.I.D. In view of this, by giving certain directions, this writ petition can be disposed of. Hence, I proceed to pass the following order:

ORDER

(I) The order dated 22nd July 2015 passed below Exh.13 in Sessions Case No.197/2009 by the Additional Sessions Judge, Aurangabad is hereby quashed and set aside. Application Exh.13 is restored to its original position.

(II) The petitioners are at liberty to file application for amendment to the application Exh.13 and the learned Additional Sessions Judge, Aurangabad may take appropriate decision on the said application for amendment.

(II) Learned Additional Sessions Judge, Aurangabad, by giving an opportunity of being heard to the petitioners-original accused Nos.1 and 2 shall dispose of the said application Exh.13 on its own merits. The petitioners-original accused Nos.1 and 2 shall not seek any unnecessary adjournment when the matter is called out for hearing on Exh.13.

(III) Criminal Writ Petition is accordingly disposed of.

(V.K. JADHAV, J.)

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