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

CRIMINAL APPLICATION NO. 1099 OF 2016

1. Satish @ Yogesh Nimba Patil,
Age: 38 years, Occu: Agri.,
R/o Mukti, Tq. & Dist. Dhule
2. Sunil Nimba Patil,
Age: 35 years, Occu: Agri.,
R/o As above
3. Ishwar Khandu Patil,
Age: 62 years, Occu: Agri.,
Occu: Retired, R/o As above
4. Chandu Ishwar Patil,
Age: 27 years, Occu: Agri.,
R/o As above
5. Umesh Ishwar Patil,
Age: 24 years, Occu: Agri.,
R/o As above

..APPLICANTS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr Kishor C. Sant, Advocate for applicants;

Mr D. V. Tele, Addl. Public Prosecutor for respondent

Mr P. S. Paranjape, Advocate to assist Add. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 10th March, 2016

ORDER :

This is an application under section 407 read with section 482 of the Code of Criminal Procedure, at the behest of the applicants-accused with a prayer for transfer of Sessions Case No.87 of 2014, pending before Additional Sessions Judge, Dhule (Mr P.H. Kale).

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2. Few facts, as are necessary for decision of the present application, are as under :-

By way of Criminal Writ Petition No.1078 of 2015, the applicants had approached this Court claiming that they being accused in Sessions Case No.87 of 2014 and the complainant being accused in "B" Summary Report No.2 of 2015 at the behest of the applicants, in the light of the judgment of the Apex Court, in the matter of Nathilal vs. State of U.P., reported in 1990 (Supp) SCC 145, both the matters be clubbed and decided together. The said prayer of the applicants came to be granted by this Court on 31st August, 2015, with following observations at para 7 of the said order :-

"It is directed that the learned Sessions Judge, while trying Sessions Case No.87 of 2014, shall call for summary report No.2 of 2015 from the files of 4rd Judicial Magistrate First Class, Dhule and shall decide them together. "

3. On the above background, it is reported that both the matters are now with learned Sessions Judge-2, Dhule.

4. Mr Sant, learned Counsel appearing on behalf of the applicants would urge that the applicants, in the above background, have approached learned Sessions Judge with a prayer for deciding Summary Report No.2 of 2015 prior to the decision of Sessions Case No.87 of 2014. It is not out of place to record here that the Sessions Case has already reached to the

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stage of recording statements of accused under section 313 of the Code of Criminal Procedure. The fact remains that recording of evidence of all prosecution witnesses in the said case is already over.

5. Learned Counsel appearing on behalf of the applicants, in the above referred background would submit that as Summary Report No.2 of 2015 is not decided, learned Counsel appearing on behalf of applicants before Sessions Judge, requested the learned Sessions Judge to decide the same, however, reflexes of the learned Sessions Judge-2 (Mr Kale), according to him, on each date of the trial in question, made the present applicants to form an opinion that they are not likely to get justice from the said Court. Mr Sant then would urge that on each and every occasion the learned Sessions Judge is coming out with a comment that for each and every cause the applicants are in habit of approaching this Court.

6. Apart from above, according to the learned Counsel, the application for transfer moved by the applicants before the learned Sessions Judge remained undecided till date and the Sessions Judge-2 is insisting the applicants to proceed further with the matter, without awaiting the decision on the transfer application. Thus, the applicants, in an emergent situation as narrated herein above, are prompted to move this Court for transfer of the matter, under section 407 of the Code of Criminal Procedure.

7. Mr Sant would then add that if the applicants' summary report is decided first, they will be in a better position to come out with their defence,

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as the out-come of the summary report has direct bearing over the stand/defence taken by them in the Sessions Case and as such, according to him, refusal on the part of learned Sessions Judge-2 to decide Summary Report No.2 of 2015 first, has also prompted them to form a basis that Sessions Judge-2 is biased and they are not likely to get justice from the said Court.

8. Mr Paranjape, learned Counsel appearing on behalf of the original complainant assisted the learned Addl. Public Prosecutor appearing in the matter.

9. While opposing the application, learned Addl. Public Prosecutor submits that it is by invitation of the applicants, based on the decision of the Apex Court, this Court has directed learned Sessions Judge to decide Sessions Case No.87 of 2014 and Summary Report No.2 of 2015 together. He would then submit that the present applicants are trying to have an order contrary to the order of this court of deciding both the matters together. He would then submit that, the fact remains that this Court has directed the learned Sessions Judge to decide the Sessions Case expeditiously, i.e. within a period of six months and thereafter this Court has granted extension of time, for want of assistance/co-operation of the applicants in expeditious disposal of the case. Learned Addl Public Prosecutor then would urge that the approach on the part of the applicants is nothing but to protract the trial, as is apparent from their conduct as is reflected from the record. According to him, recording of evidence of

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prosecution witnesses is already over. Time and again, the Sessions Case is adjourned at the request of the applicants, which is now at the stage of recording their statements under section 313 of the Code of Criminal Procedure. He would submit that the application is moved with a *mala fide* intention and be dismissed with exemplary costs.

10. Having bestowed my thought to the submissions made, it is required to be observed that in view of filing of present application under section 407 of the Code of Criminal Procedure before this Court, the application of the applicants under the said provision which is pending before the learned Sessions Judge, in my opinion, has rendered infructuous and no further orders are warranted on the said application and same is ordered to be disposed of as infructuous.

11. It is then required to be noted that the applicants themselves have invited observations in the order passed in Criminal Writ Petition No.1078 of 2015, that Summary Report No.2 of 2015 be decided together with Sessions Case No.87 of 2014. It is not brought to the notice of this Court that the learned Sessions Judge is not deciding both the matters together, rather it will be premature to say that the Sessions Judge-2 is not taking up both the matters together. It is then required to be noted that the insistence of the applicants that Summary Report No.2 of 2015 be decided by the learned Sessions Judge-2 first, has hardly any support in law, when based on the Apex Court judgment in the matter of Nathilal (cited supra) in which it is observed that in case if request is made, both the matters be

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decided together, this Court has directed accordingly. The applicants efforts to get Summary Case No.2 of 2015 decided first, is nothing but an attempt either to review the order passed in Criminal Writ Petition No.1078 of 2015, which was passed at their behest only, based on the law laid down by the Apex Court, and also to stall the proceedings before the learned Sessions Judge-2, which are at concluding stage. In my opinion, the efforts on the part of the applicants, particularly in the background of the pleadings made in the application are nothing but a deliberate approach to protract the trial, which was already made time bound by this Court.

12. In the above background, in my opinion, no case for transfer is made out.

13. Having regard to the conduct of the applicants as noted above, in my opinion, it will be appropriate to direct them, to pay costs of Rs.10,000/- to be deposited before learned Sessions Judge-2, Dhule, within a period of two weeks from today. On deposit of costs, learned Sessions Judge-2, Dhule will be at liberty to order its appropriation, in his discretion.

14. In view thereof, Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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