

(1)

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

CRIMINAL WRIT PETITION NO.288 OF 2016

1. Sachin s/o Sadashiv Chitne,
Age : 28 years, Occu. Education,
2. Sadashiv Kishanappa Chitne,
Age : 55 years, Occu. Labour,
3. Shobhabai Sadashiv Chitne,
Age : 48 years, Occu. Household,
All R/o Near Appa Swami Temple,
Sengaon, Tq. Sengaon,
Dist. Hingoli

..PETITIONERS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr S.J. Salunke, Advocate for petitioners;
Mr D.V. Tele, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th March, 2016

ORDER :

Heard learned Counsel appearing on behalf of the petitioners and
learned Addl. Public Prosecutor on behalf of the respondent.

2. Perused the impugned order dated 18th February, 2016.
3. It is not in dispute that the application Exh.92 came to be moved
after recording of statements of the present petitioners-accused under
section 313 of the Code of Criminal Procedure.

(2)

4. It will be useful to refer here the provisions of sub-section (3) of section 233 of the Code of Criminal Procedure, which read thus :-

"233. Entering upon defence.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

5. Having regard to the above quoted provision, in my opinion, the learned Additional Sessions Judge, Gangakhed has committed an error by passing the order contrary to the said provision.

6. In this view of the matter, writ petition succeeds. I, therefore, pass following order :-

The order dated 18th February, 2016, passed by Additional Sessions Judge, Gangakhed, below Exh.92, in Sessions Trial No.38 of 2012, is hereby quashed and set aside. Application Exh.92 stands allowed.

Learned Additional Sessions Judge shall pass a consequential order, in the light of what has been observed herein above.

(3)

Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj