

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

CRIMINAL WRIT PETITION NO. 324 OF 2016

1. Rajendra s/o Anil Mayur,
Age: 74 years, Occ: Nil,
Presently r/o Flat No. 2,
Madhupushpa Apartment,
Bhavsar Colony, Dhule,
District Dhule.
 2. Jagannath Nathu Wani,
Age: 76 years, Occ: Nil,
Presently r/o Bungalow No. 70,
Pramod Nagar, Sector No. 3,
Deopur, Dhule, Dist. Dhule.
- ...Petitioners

versus

The State of Maharashtra. ...Respondent

WITH

CRIMINAL WRIT PETITION NO. 329 OF 2016

1. Mahendra Tangu Sapkale,
Age: 47 years,
R/o Shivaji Nagar, New Dudh
Federation, Jalgaon, Dist. Jalgaon.
2. Chudaman Shankar Patil,
Age: 64 years,
R/o. 262, Shivaji Nagar,
Jalgaon, Dist. Jalgaon.
3. Shivcharan Kanyalal Dhandore,
Age: 71 years,
R/o. Baliram Peth, Near Brahman Wadi,
Jalgaon, Dist. Jalgaon.
4. Saraswatabai Ramdas Koli,
Age: 69 years,
R/o. Pimprala Dhandekar Nagar,
Plot No. 69, Jalgaon,
Dist. Jalgaon.
5. Vasudev Parsuram Sonawane,
Age: 60 years,

- R/o. 2, Ramnagar, Mehrun,
Jalgaon, Dist. Jalgaon.
6. Saubhadrabai Suresh Naik,
Age: 63 years,
R/o. Shri Sant Gyaneshwar Chowk,
Mehrun, Jalgaon,
Dist. Jalgaon.
 7. Iqbalodin Giyauddin Pirjade,
Age: 58 years,
R/o. Pirjade Wada, Mehrun,
Jalgaon, Dist. Jalgaon.
 8. Shantaram Chindu Sapkale,
Age: 69 years,
R/o. 97, Joshi Peth,
Jalgaon, Dist. Jalgaon.
 9. Devidas Baliram Dhande,
Age: 45 years,
R/o. 18, Jankinagar, Near Old Neri Naka,
Jalgaon, Dist. Jalgaon.
 10. Dattu Devram Koli,
Age: 61 years,
R/o. 37, Kanchan Nagar,
Jainabad, Jalgaon,
Dist. Jalgaon.
 11. Digambar Dalpat Paitl,
Age: 66 years,
R/o. 6, Joshi Peth,
Near Panjarapl Water Tank,
Jalgaon, Dist. Jalgaon.
 12. Ashok Ramdas Pardeshi,
Age: 59 years,
R/o. Indrapasta Colony,
Plot No. 45/2, Jalgaon,
Dist. Jalgaon.
 13. Liladhar Nattu Sarode,
Age: 56 years,
R/o. 461, Vitthal Peth,
Jalgaon, Dist. Jalgaon.
 14. Manujula Dharmendra Kadam,
Age: 47 years,
R/o. Near Noorani Masjid

Shahu Nagar, Jalgaon,
Dist. Jalgaon.

15. Nirmala Suryakant Bhosale,
 Age: 58 years,
 R/o. 36, Polan Peth,
 Jalgaon, Dist. Jalgaon.
16. Vimal Budha Patil,
 Age: 48 years,
 R/o. Harivitthal nagar,
 Mahadev Chowk, Jalgaon,
 Dist. Jalgaon.
17. Sadhana Radhesham Kogta,
 Age: 51 years,
 R/o. 172, Vishanji Nagar,
 Jalgaon, Dist. Jalgaon.
18. Alka Nitin Laddha,
 Age: 48 years,
 R/o. Laddha Farm House,
 Ajanta Chowk, Jalgaon,
 Dist. Jalgaon.
19. Mutajbi Husekha,
 Age: 51 years,
 R/o. Nasheman Colony,
 Plot No. 1, Jalgaon,
 Dist. Jalgaon.
20. Sunanda Ramesh Chandelkar,
 Age: 56 years,
 R/o. 310, Joshi Peth,
 Jalgaon, Dist. Jalgaon.
21. Meena Amrutlal Mandhan,
 Age: 51 years,
 R/o. 495, Siddhi Colony,
 Jalgaon, Dist. Jalgaon.
22. Rekha Chatrubhuj Sonawane,
 Age: 44 years,
 R/o. Shani Peth, Near Shani Temple,
 Jalgaon, Dist. Jalgaon.
23. Bhagirathi Budho Sonawane,
 Age: 79 years,
 R/o. Walmik Nagar, Asoda Road,
 Jalgaon, Dist. Jalgaon.

24. Meena Anil Wani,
Age: 44 years,
R/o. 162, Shanipeth, Jalgaon,
Dist. Jalgaon.
25. Pushpalata Shaligram Atarde,
Age: 56 years,
R/o. Yash Apartment, Block No.1/2
Old Nashirabad Road,
Jalgaon, Dist. Jalgaon. ...Petitioners

versus

The State of Maharashtra. ...Respondent

WITH

CRIMINAL WRIT PETITION NO. 337 OF 2016

Pradip s/o Gyanchand Raisonni,
Age: 59 years, Occ: Business,
R/o. 20, Ganapatinagar, Jalgaon,
At Agrawal Nagar, Dhule, Agrasen
Chowk, District Dhule. ...Petitioner

versus

The State of Maharashtra. ...Respondent

WITH

CRIMINAL WRIT PETITION NO. 339 OF 2016

1. Ashok Kashinath Sapkale,
Age: 51 years,
R/o Vasusapna Building,
Shivaji Nagar, No.1,
Jalgaon, Dist. Jalgaon.
2. Vijay Ramdas Wani,
Age: 61 years,
R/o. 302, Lake Residency,
Near Mehrun Talva, Shirol Road,
Jalgaon, Dist. Jalgaon.
3. Ajay Ram Jadhav,
Age: 49 years,
R/o. Prabhat Colony in Front of
Khake Hospital, Jalgaon, Dist. Jalgaon.

4. Chtrabhuj Soma Sonwane,
Age: 53 years,
R/o. Shivbnhakta Nivas, Near
Shanimandir, Shanipeth, Jalgaon,
Dist. Jalgaon.
5. Kailas Naryan Sonwane,
Age: 47 years,
R/o. 9, Shanipeth,
Jalgaon, Dist. Jalgaon.
6. Lata Ranjit Bhoite,
Age: 61 years,
R/o. Ahilya Niwas, Jalgaon,
Dist. Jalgaon.
7. Sadashiv Ganpat Dhekale,
Age: 64 years,
R/o. 75, Shivneri, Adarshh Nagar,
Jalgaon, Dist. Jalgaon. ...Petitioners

versus

The State of Maharashtra.

...Respondent

WITH

CRIMINAL WRIT PETITION NO. 347 OF 2016

1. Chandrakant @ Aba s/o Shankar Kapse,
Age: 52 years, Occ: Agri.,
R/o Plot No. 21, Shankar Appa Nagar,
Near Hanuman Temple, Pimprala,
Jalgaon, Tq. & Dist. Jalgaon.
2. Alka w/o Arvind Rane,
Age: 61 years, Occ: Household,
R/o. 3, Laxmi Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
3. Pushpa w/o Prakash Patil,
Age: 58 years, Occ: Household,
R/o. Yojana Building, Sane
Guruji Colony, Behind Collector Bungalow
Jalgaon, Tq, & Dist. Jalgaon.
4. Diagambar s/o Daulat Wani,
Age: 71 years, Occ: Retired,
R/o. 84, Daulat Building,

Ganesh Colony, Jalgaon,
Tq. & Dist. Jalgaon.

5. Laxmikant @ Kanti s/o Tukaram
Choudhari, Age: 50 years,
R/o. 587/B-1, Tukaram Wadi,
Zillka Peth, Jalgaon,
Tq. & Dist. Jalgaon.
6. Bhagatram s/o Rawalmal Balani,
Age: 51 years, Occ: Business & Agril.
R/o. 20, Sant Rajaram Nagar, Jalgaon,
Tq. & Dist. Jalgaon.
7. Pandurang s/o Raghunath Kale,
Age: 64 years, Occ: Business,
R/o. 33, Omkar Nagar, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon.
8. Sudha w/o Pandurang Kale,
Age: 57 years, Occ: Household,
R/o. As above.
9. Vijay s/o Panditrao Kolhe,
Age: 60 years, Occ: Agri.,
R/o. Kasi, Kolhenagar,
Jalgaon, Tq. & Dist. Jalgaon.

...Petitioners

versus

The State of Maharashtra.

...Respondent

WITH

CRIMINAL WRIT PETITION NO. 356 OF 2016

Pandharinath Dhondiba Kale,
Age: 57 years, Occ: Service,
R/o. JDCC Bank Colony,
Bhikamchand Jain Nagar,
Jalgaon, Dist. Jalgaon.

...Petitioner

versus

The State of Maharashtra.

...Respondent

WITH

CRIMINAL WRIT PETITION NO. 365 OF 2016

Gulabrao Baburao Devkar,
Age: 60 years, Occ: Agri.,
R/o. Jalgaon, Tq. & Dist. Jalgaon,
Presently residing at Pune,
Tq. & Dist. Pune.

...Petitioner

versus

The State of Maharashtra.

...Respondent

.....
Mr. P.M. Shah, Senior Advocate i/b Mr. N.B. Suryawanshi, Advocate for
petitioners in Criminal Writ Petition No. 324 of 2016
Mr. Virendra H. Parekh, Advocate h/f Mr. D.J. Patil, Advocate for
petitioners in Criminal Writ Petition No. 329 of 2016
Mr. N.B. Suryawanshi, Advocate h/f Mr. D.J. Patil and Mr. A.V. Patil,
Advocates in Criminal Writ Petition Nos. 339 of 2016 and 356 of 2016
Mr. K.C. Sant, Advocate for petitioner in Criminal Writ Petition No. 337 of
2016
Mr. P.S. Patil, Advocate for petitioners in Criminal Writ Petition No. 347 of
2016
Mr. N.B. Khandare, Advocate for petitioner in Criminal Writ Petition No. 365
of 2016
Mr. P.P. Chavan, Special Public Prosecutor for respondent/State
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CORAM : N.W. SAMBRE, J.**DATE : 16th MARCH, 2016****ORDER :**

Since in all these writ petitions, the order, which is
impugned, is same and arising out of the same sessions trial i.e.
Special Case No. 01 of 2014, all these writ petitions are heard
together, upon request of the respective parties and disposed of
finally.

2. This Court must take note of the fact that the Hon'ble Apex Court has expedited the hearing of the trial.

3. The petitioners are the accused in Special Case No. 01 of 2014, wherein the petitioners are facing prosecution for the offence punishable under Sections 120-B, 406, 420, 411, 109 read with Section 34 and under Sections 465, 466, 468, 471 read with Section 120-B of Indian Penal Code.

4. The facts, as are necessary, for deciding the issue, as is raised in the present petitions, are as under :-

PW-1, the then Commissioner of Jalgaon Municipal Corporation in the above sessions trial was examined so as to prove about 1200 documents from official record of the Municipal Corporation.

5. During the course of recording of the examination in chief of the said PW-1, learned Counsel for the accused has raised objection for exhibiting the documents. Learned Sessions Court ordered exhibiting the documents subject to objection of the accused persons and then observed that the objection of the petitioners-accused will be decided at the final stage of hearing of sessions trial.

It is further claim of the petitioners-accused that cross examination of PW-1 be deferred till the evidence of other witnesses is over. The next submission that was raised was approver Sindhutai Kolhe be examined first, as the same is a convention and practice as is adopted during trial.

6. The applications to that effect are moved by the petitioners at Exhibits-2306 and 2307, which came to be rejected by learned Special Judge, Dhule, who is dealing with Special Case vide order dated 24/02/2016. As such, these petitions.

7. Mr. Shah, learned Senior Advocate appearing for the petitioners made following three submissions; (a) cross examination of PW-1 be deferred pursuant to the provisions of Section 231(2) of Code of Criminal Procedure on the ground that PW-1, who was examined, has joined service of the Corporation in 2005 and has deposed in support of the official documents, which were of the year 1997 or so, (b) the approver Sindhutai Kolhe be examined first and (c) stage at which the decision as regards whether the documents are proved or not, is required to be gone into at the stage of recording of the evidence itself and not at later stage, as same puts the accused to unfair trial.

8. In support of above referred contentions, learned Senior Advocate would submit that as per provisions of Article 227 (2) (b) sub-Article (3) of Article 227 of the Constitution of India, the Criminal Court Manual provides for recording of evidence and objections to be dealt with, as are raised during the said event. According to him, Criminal Manual has statutory force, as the same are framed in accordance with above referred Article of the Constitution and approved by the Court. According to him, if clause-33, 34 and 35 of Chapter VI of the Manual, which have statutory force, are perused, the same mandates that if objection for exhibiting document is raised, then Court must give its verdict on the said objection then and there only. He, in support thereof, would rely upon the judgments of this Court in the matter of **Gopal Shankarrao Deshmukh vs. Jagdamba Nagri Sahakari Pathsanstha** reported in **2013 BCI (O) 1281** and in the matter of **Geeta Marine Services vs. State of Maharashtra** reported in **2009(2) Mh.L.J. 410**. He would then submit that in both these judgments, the law as is laid down contemplates that if objection is raised to exhibit the document, then such objection must be decided then and there only, as same is right of the accused. According to him, the accused has every right to call for the decision of the Court regarding exhibiting particular document having properly proved or otherwise, as his further case, particularly in the matter of cross examination of the witness depends on such verdict. He would

then submit that the Court has every power of de-exhibiting the document by considering relevant aspect even if the document is marked as exhibit and sought reliance upon paragraphs-8,9 and 10 of the judgment in the matter of **Gopal Shankarrao Deshmukh** (supra). He would then invite attention of this Court to the findings recorded by the High Court in the matter of **Geeta Marine Services** (supra) so as to submit that the objection for exhibiting document has to be raised at the earlier stage and the accused has every right to invite Court's order on such objection. In support of his reliance on clause-33 and 34 of Chapter VI of the Criminal Manual, he has invited attention of this Court to paragraph-29 of the said judgment. He would then submit that the law of evidence contemplates that the objection to the document during evidence has to be dealt with then and there only including that of proof so as to prove the contents thereof.

9. According to him, the Court has failed to consider the law laid down by the Apex Court in the matter of **Bipin Shantilal Panchal vs. State of Gujarat and another** reported in **A.I.R. 2001 SC 1158** and has failed to understand the object of enacting the law on the issue of deciding the objection to exhibit the document raised while recording the evidence. He would then submit that learned Special Court has failed to appreciate the judgment in the

background of issues that were raised and has drawn illegal conclusion. According to him, PW-1 if has seen, verified and studied the documents, that does not mean that PW-1 has proved those documents being public documents and the competency of PW-1 to depose in support of those documents is also required to be analyzed. He would then submit that the accused-petitioners have no objection to exhibit the public documents and also certified copies pursuant to the provisions of Section 74 of the Evidence Act, provided the same are coming out of from proper custody. He would then submit that if approach of learned Special Court as has been noted in the present case is permitted to be continued, the same will put the claim of accused qua their defence in very precarious condition and the petitioners will not be getting an opportunity of fair trial. The preposition of learned Special Court, if is accepted as is reflected in the impugned order, the same is dangerous one.

Mr. Shah, learned Senior Advocate, based on the judgments of Apex Court in the matter of **Geeta Marine Services** (supra) in the matter of **R.V. E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and another** reported in **AIR 2003 SC 4548**, would urge that there are two classes of documents, admissibility of which could be objected; (a) the document itself is inadmissible, which is sought to be proved and (b)

objector does not dispute admissibility of the document in evidence but mode of proof so as to prove such document being irregular or insufficient. Based on the above submission, he would submit that the documents as are placed on record and marked exhibits in the evidence of PW-1 would fall in second category i.e. admissibility of the documents is not disputed, however, the mode of proof as is taken into account for declaring said document has proved, is required to be ascertained.

10. He would then submit that the objections raised by the petitioners, which are rejected by the Special Court, be considered afresh and be decided accordingly.

11. The next limb of submission of Senior Advocate is, Section 231(2) of Code of Criminal Procedure cast discretion on the Court to consider request of the accused to defer cross examination of the witness. According to him, the said discretion is required to exercise judiciously and in a fit case, it is always open for the Court to exercise powers under Section 231 (2) of Code of Criminal Procedure. He would then submit that the impugned order does not deal with the said aspect as to why the Court has not exercised the discretion of deferring cross examination of PW-1. He would then rely upon the judgment of this Court in the matter of ***Dattu s/o Uttam***

Punde and others vs. State of Maharashtra reported in **2014 BCI (O) 153**, particularly paragraphs-3, 4, 5 and 6 of the said judgment. According to him, the order of rejection of the prayer has to be passed on reasonable appreciation of the case of accused and supported by good reasons, which are conspicuously absent in the order impugned. He would submit that since Special Court has not recorded any findings, this Court may appreciate the said issue and grant request of the petitioners to defer the cross examination of PW-1.

12. Mr. Parekh, learned Counsel for petitioners in Writ Petition No. 329 of 2016, while inviting attention of this Court to the provisions of Section 59 (oral evidence) and Section 60 (hearsay evidence) of Evidence Act, would submit that the evidence that is brought on record by PW-1 is admissible and is required to be excluded at once. In support of his contention, he has relied upon the judgment of Privy Council in the matter of **Maharaja Sris Chandra Nandy and another vs. Rakhalananda and others** reported in **A.I.R. 1941 PC 16**. He would then submit that procedure of evidence as is recorded and matter as is brought on record in evidence is with an intention to ascertain the truth. While doing so, the Court should not form dangerous preposition that the objection to the evidence could be looked into at the stage of final hearing, as if defence of the

accused always depends the objection raised to exhibit the document while recording the evidence. He would then tried to invite the attention of this Court to the certain observations from the said judtgment.

13. According to Mr. Parekh, the evidence of PW-1 is not admissible, as he has not deposed in support of true contents of the documents and the contents of the said documents are required to be proved independently by the witness. According to him, PW-1 could prove only such documents or seek to exhibit such documents, to which he is original signatory or author. In absence of evidence of original signatory or author, the contents of the document cannot be considered to be proved which are required to be proved by examining such signatory or author. He would then invite attention of this Court to the provisions of Sections 45 and 47 of the Act so as to submit that PW-1 is not a skilled person, who can identify the signature or handwriting. According to him, the Court should be alive to the scheme of Sections 63, 65, 67 and 74 of the Evidence Act. He has drawn support of the judgment of Bombay High Court in the matter of ***Om Prakash Berlia and another vs. Unit Trust of India and others*** reported in ***A.I.R. 1983 Bombay 1***. According to him, there are certain provisions like Section 159 which provides for refreshing of memory, Section 81 admissibility of hearsay evidence

and Section 167 judgment must be based on the facts declared to be relevant and duly proved. As such, according to him, the order of learned Court below of rejecting the claim of the petitioners, particularly in relation to the objection for exhibiting the documents and prayer for de-exhibition needs to be allowed. He would then submit that if the scheme of Section 313 of Code of Criminal Procedure is taken into account, which deals with recording of plea of accused, plea of the accused in the above referred back ground, will be recorded based on unproven evidence, which could be inferred as denial of opportunity of fair trial to the accused. According to him, approach of learned Special Court of marking article to a disputed document, except proof, the document depicts complete inconsistent approach.

14. Mr. Sant, learned Counsel for the petitioner in Writ Petition No. 337 of 2016, while trying to make out case pursuant to the provisions of Section 305, 308 of Code of Criminal Procedure in the matter of case of approver, would submit that before cross examination of the complainant, the approver and other witnesses are required to be examined. He would then invite attention of this Court to the application seeking prayer for recording of evidence of the approver first. According to him, there is convention and standard practice adopted before the Criminal Courts that approver's

evidence is required to be recorded first, as failure to do so, may result in causing prejudice to other accused and accused loose chance of fair trial. While substantiating the said submission, he would submit that the approver is original accused person, who is granted pardon and in case if he would not support the case of the prosecution, it will be open for the prosecution to move application under Section 308 of Code of Criminal procedure for withdrawing status of approver and such approver then will face independent trial in the matter.

15. Mr. Sant, in the above referred background, would submit that in case if approver would not support the case of prosecution, the same will also cause prejudice to the accused persons. He would then submit that though speedy and fair trial is a right of the accused, however, same cannot be compromised or sacrificed at the cost of inadmissible evidence. In support thereof, he has relied upon various judgments amongst others ; **(1) 2012 AIR SCW 5502 (V.K. Sasikala v. State Rep. By Superintendent of Police), (2) 1994 AIR SCW 1500 (Rampal Pithwa Rahidass and others vs. State of Maharashtra and State of Maharashtra vs. Basawan and others and (3) 1968 Cri.L.J 514 (Thangbul and others vs. Government of Manipur)**. Mr. Sant, while inviting attention of this Court from the above referred judgments, would

submit that there is no express provision in the statute, which prompts recording of evidence of approver first, however, passing of reference could be found or noticed in all the above referred judgments. According to him, examination in chief of PW-1 was over on 16/02/2016 and at the first opportunity i.e. on 18/02/2016 an application is moved by petitioners for recording of the evidence of approver first.

16. Mr. Khandare, learned Counsel for the petitioners in Writ Petition No.365 of 2016 and Mr. P.S. Patil, learned Counsel for the petitioners in Writ Petition No. 347 of 2016 have adopted the above referred submissions. They would submit that in stead of relegating the matter back to learned Special Court, this Court should decide prayer of the petitioners here only.

17. While opposing the claim of the petitioners, Mr. Chavan, learned Special Public Prosecutor would submit that, PW-1 Dr. Gedam, IAS Officer, was Commissioner of Municipal Corporation from 09/10/2005 to May 2006. He would submit that the complaint came to be lodged on 03/2/2006 and after completion of investigation, the cahрге sheet was filed on 25/-04/2012 and 01/06/2012 (supplementary charge sheet). According to him, there are 120 witnesses and 2000 documents, which are collected during

the investigation and charge came to be framed on 30/05/2013. Pursuant to the provisions of Section 294, it is thereafter the prosecution has issued notice to the accused for admitting the documents and witness summons came to be issued on 30/06/2013. He would submit that learned Special Court with an intention to afford fair opportunity of trial to the petitioners-accused persons, so also to prosecution, has though exhibited documents, however, same is subject to the objection raised by the accused persons. He would then submit that the Special Court has not decided the issue as regards validity of the objection raised by the petitioners-accused persons and has further observed that same can be gone into at the stage of final hearing of the trial, particularly in the background of the voluminous documents of the case, based on the judgment of the Apex Court in the matter of **Bipin Shantilal Panchal** (supra). He would then submit that the applications filed by the petitioners-accused is with an intention to protract the trial and creates such circumstances so as to get release of accused No.5, who is an influential person, on regular bail. He has relied upon the observations made by this Court in the matter of rejection of bail of accused No. 5. Apart from above, he would submit that if the course as is sought to be canvassed by the petitioners in the matter of deciding objections raised by them is adopted, examination in chief of PW-1 which is recorded for period of around 11 months will

continue for years together. According to him, the Special Court was right in relying upon the case of ***Bipin Shantilal Panchal*** (supra). He would then submit that Bombay High Court has consistently followed the view expressed by Apex Court in the matter of ***Bipin Shantilal Panchal*** and ***State through Special Cell, New Delhi vs. Navjot Sandhu alias Afshan Guru reported in 2003(6) SCC 641***, and the judgment of this Court in the matter of ***Boman. P. Irani and another vs. Manilal P. Gala and others*** reported in ***(2004) 2 Mh.L.J. 128***. He has also invited attention of this Court in the matter of full bench judgment of Bombay High Court in the matter of ***Hemendra Rasiklal Ghia vs. Subodh Mody*** reported in ***(2008) 6 Mh.L.J. 886*** so as to substantiate his contention that the approach of learned Special Court in deferring the decision on the objection as regards admissibility of evidence/objection to exhibit the documents could be gone into at the stage of final hearing of the case. He would then submit that the case of petitioners as is sought to be canvassed herein is premature and it is always open for the petitioners to raise their grievance at appropriate stage.

18. The next submission of learned Special Public Prosecutor is, burden to prove the case on the prosecution including to prove the evidence so as to bring home guilt of the accused. According to him, if the prosecution fails to prove any document, the

Court will draw appropriate inference to that effect. In support thereof, he has relied upon the judgment of Apex Court in the matter of ***Haripada Dey vs. The State of West Bengal and another*** reported in ***AIR 1956 SC 757***.

19. While inviting attention of this Court to the various provisions of Evidence Act, such as Sections 9, 78(5), 144, he would submit that the nature of evidence as is brought on record and the custody from whom such evidence is brought and status of evidence is rightly appreciated by learned Special Court. He would then submit that the said contention raised by the petitioners as regards admissibility of the evidence and inviting decision on their objection, then and there only is rightly rejected by learned Special Court.

20. The next submission of Special Public Prosecutor is that for deferring cross examination of PW-1 as is prayed by the petitioners pursuant to the provisions of Section 231(2) of Code of Criminal Procedure is concerned, there is no mandate of law, which prompts deferring of cross examination of the witness at the behest of accused persons. According to him, the accused can ask for his fair trial and not victimization. He would submit that the manner and mode, in which the witness is to be examined in accordance with the Evidence Act, is open for the prosecution and just because PW-1 in

his examination in chief has deposed against the accused persons, does not contemplate invoking of provisions under Section 231(2) of Code of Criminal Procedure by the accused-petitioners. He would then submit that the evidence as is admissible upon scrutiny of the same will be considered by Special Court at appropriate stage and remaining evidence will be rejected from the evidence of PW-1. He would then submit that all the petitions are liable to be thrown away at the threshold, as all the accused persons are not impleaded party respondents to the petitions. According to him, approver's evidence cannot be recorded at the behest of the petitioners at the very beginning of the trial, as prosecution, at appropriate stage, shall examine the said witness. He would then submit that the case of the petitioners needs to be rejected, which is premature and is moved with an intention to protract the trial.

21. In this back ground, I have bestowed my anxious thought to the submissions made. Initially, this Court would like to deal with the issue of request for deferring of cross examination of PW-1 pursuant to provisions of Section 231(2) of Code of Criminal Procedure. Learned Senior Advocate for the petitioners, while inviting my attention to the language employed in Section 231(2) of Code of Criminal Procedure has submitted that same is discretionary powers of the Court, which are exercised by the learned Court in a

reasonable manner. According to him, perusal of the order impugned depicts that the said issue is at all not dealt with by learned Special Court, particularly in the background of scheme of Section 231 of Code of Criminal Procedure. He would then submit that law laid down by this Court in the matter of ***Dattu s/o Uttam Punde and others*** (supra) is also considered in altogether different prospective.

22. So as to substantiate the claim under sub section (2) of Section 231 of Code of Criminal Procedure, the cross examination of PW-1 is required to be deferred, Mr. Shah, learned Senior Advocate has placed reliance upon the judgment of Bombay High Court in the matter of ***Dattu s/o Uttam Punde and others*** (supra).

23. Upon considerations of submissions, it is required to be noted that plain reading of Section 231 of Code of Criminal Procedure depicts that exercise of powers thereunder are purely within discretion of the Court and discretion, of course, is required to be exercised judiciously and in a reasonable manner. The petitioners-accused, in my opinion, are required to make out exceptional case, which rather prompts learned Court to exercise discretion in favour of the petitioners, thereby ordering deferring of cross examination of PW-1. The observations made by this Court in the matter of ***Dattu s/o Uttam Punde and others*** (supra) if are

considered, this Court has also taken view that those powers are discretionary one and learned Special Court is required to exercise discretion in a reasonable manner, keeping in view the object of entitlement of fair trial to the accused.

24. During the course of hearing, nothing is brought to my notice but for the fact that in examination in chief of PW-1, the documents as are exhibited, are ought not to have been exhibited unless are proved. The same, in my opinion, cannot be a issue, which attracts the provisions of Section 231(2) of Code of Criminal Procedure so as to exercise discretion in favour of the petitioners, so as to defer the cross examination of PW-1. The said issue of exhibiting documents, by keeping intact objections raised by the petitioners, takes care of the interest of the petitioners, as the said issue will be gone into by learned Court at the time of final hearing of the matter.

25. In this back ground, even if the prayer of the petitioners for deferring the cross examination of PW-1 pursuant to the provisions of Section 231(2) of Code of Criminal Procedure is independently considered by this Court irrespective of the observations of learned Special Court, still in my opinion, no exceptional circumstances are brought to the notice of this Court to

direct exercise of discretion under Section 231(2) of Code of Criminal Procedure. In this back ground, the prayer for deferring the cross examination is required to be rejected and is rightly rejected by learned Special Court.

26. The second issue canvassed by learned Counsel for the petitioners is in relation to recording of evidence of approver witness Sindhutai Kolhe at the beginning of the trial. My attention is invited to the provisions of Sections 306, 307 and 308 of Code of Criminal Procedure so as to prevail upon this Court to order recording of evidence of approver immediately after commencement of trial. Learned Counsel for the petitioners would submit that approver in the back ground of above referred provisions of Code of Criminal Procedure is an accused and as such, she is granted special status pursuant to Section 306 and 307 of Code of Criminal Procedure and if she would not stand by case of prosecution, Section 308 of Code of Criminal Procedure bestows powers on the Court, which are to be exercised for putting such approver again in the category of accused and to try him as an accused in the crime. Support is also drawn from the following submission that it is convention, standard practice and requirement of fair trial that an approver (a pardoned accused) was examined first. Though it is claimed that the evidence of approver is required to be corroborated with the evidence of other

accused and hence, his evidence be recorded at the beginning.

27. In my opinion, such prayer that approver's evidence be recorded at the beginning of the trial could hardly find any place either in the Code of Criminal Procedure or in Criminal Manual. It is to be noted that law on the aspect of examination of the witness by the prosecution speaks of discretion of the prosecution. It is at the discretion of the prosecution, the prosecution can examine witness in an order as is convenient to the prosecution and not to the accused. The petitioners, though, have placed reliance upon the judgments of the Apex Court in the matter of **V.K. Sasikala, Rampal Pithwa Rahidass** and **Thangbul and others**, cited *supra*, hardly any supporting observations could be noticed in all three judgments, which prompts this Court to take a view that evidence of approver is required to be examined first. It is to be noted that burden to prove prosecution case is on the prosecution and not on the accused and as such, does not at the dictates or whims of the accused persons that approver's evidence could be recorded at the beginning of the trial. In view thereof, plea that the evidence of approver be recorded at the inception of the trial also does not find place in support of law and same is also rejected.

28. The important issue that is sought to be raised by all the

petitioners is in relation to approach of learned Special Court in the matter of recording of evidence of PW-1. The petitioners have raised an objection for exhibiting the documents, particularly without declaring them to be proved or otherwise though were objected by the petitioners. The petitioners's claim is that their objections are not decided and finding is recorded that the documents will be marked tentatively exhibits and admissibility of such documents could be looked into at the time of final hearing of the trial.

29. Though learned Counsel for the petitioners have relied upon the judgment of Apex Court in the matter of ***R.V.E. Venkatachala Gounder*** and ***Geeta Marine Services*** (supra), it is required to be noted here that complaint in the present case was lodged on 03/02/2006 and charge sheet came to be filed on 25/04/2012 and supplementary charge sheet on 01/06/2012. The prosecution has cited about 120 witnesses and is relying upon 1200 documents, charge came to be framed on 30/05/2013 and recourse to the provisions of Section 294 of Code of Criminal Procedure was taken to. The examination in chief of PW-1 has took around 11 months in the matter. It is required to be noted that the procedure that is adopted for the purpose of exhibiting the documents, which are from the record of Municipal Corporation, a statutory body, is governed by the provisions of Section 74 onwards of the Evidence

Act. The said are termed to be public documents by the prosecution and record is maintained while performing official duty of the statutory Corporation. The custodian of the record is Corporation and the Commissioner is executive head of the same. In the capacity of the then Commissioner of Corporation and being aware about contents of record, on which he has already worked, has deposed in support of prosecution case. In the evidence of PW-1, the entire record as is relied upon by him appears to be part and parcel of official record of Municipal Corporation. In this back ground, if the submission of learned Counsel of the petitioners in the matter of seeking verdict from this Court that Special Court should first decide in express terms the admissibility of the documents based on the degree of proof. The same is pressed into service so as to declare that such documents are not proved, as PW-1 is neither author or signatory of such documents even though he was executive head of the Corporation. In my opinion, learned Special Court has rightly proceeded to pass the impugned order, thereby making observations that the issue as regards whether the documents which are tentatively exhibited and to which the petitioners-accused have raised objections so as to state that the said documents are not proved could be decided at the stage of final hearing of the trial. Learned Special Court was right in relying upon law laid down by the Apex Court in the matter of **Bipin Shantilal Panchal** (supra), so also

the full bench judgment of this Court in the matter of **Hemendra Rasiklal Ghia** (supra).

30. It is required to be noted here that the petitioners have invited my attention to the judgment of this Court in the matter of **Gopal Shankarrao Deshmukh** (supra) so as to submit that in case if the document is proved pursuant to the provisions of Evidence Act having regard to proof of the contents of the document, then only it can be exhibited. The said judgment is also pressed into service so as to claim that the powers to de-exhibit the documents also vests with the same Court. The petitioners have also relied upon the judgment in the matter of **Geeta Marine Services** (supra), particularly paragraphs-15, 16, 17, 20, 22, 23 and 25 so as to claim that the documents in question are not disputed to be not admissible, however, the documents must be proved by bringing on record sufficient proof thereof and simply because the said documents are coming from the custody of Corporation and PW-1, then Commissioner of Corporation, who at the relevant time was not in-charge of Corporation, has deposed in favour of such documents, cannot be treated as proved and marked exhibits.

31. Paragraphs-11, 12, 13 and 14 of the judgment in the matter of **Bipin Shantilal Panchal** (supra) are worth referring to,

which reads thus :

“11. We are compelled to say that the trial judge should have shown more sensitivity by adopting all measures to accelerate the trial procedure in order to reach its finish within the time frame indicated by this Court in the order dated 31.3.2000 since he knew very well that under his orders an accused is continuing in jail as an under-trial for a record period of more than seven years. Now, we feel that the Additional Judge, whether the present incumbent or his predecessor, was not serious in complying with the directions issued by this Court, though the parties in the case have also contributed their share in bypassing the said direction.

As pointed out earlier, on different occasions the trial judge has chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. The worse part is that after passing the orders the trial court waited for days and weeks for the concerned parties to go before the higher courts for the purpose of challenging such interlocutory orders.

12. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this:

Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

13. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. However, we make it clear that if the objection relates to deficiency of stamp

duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.

14. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

32. It is required to be noted that the said judgment considers intricacies of criminal trial and difficulties faced by the Court while recording the evidence pursuant to the objections raised. The Hon'ble Apex Court, in the above referred observations, has provided liver to the trial Court in the form of practice to be followed for collecting the evidence during the trial. It is required to be noted that in spite of above position in law, the submission of Senior Advocate is the degree of proof ought to have considered by the Court before exhibiting the document and terming the same to be

proved should have been examined, then and there only instead of keeping the said issue lingering and to be considered at the time of final hearing. It is required to be noted that the said submissions were rightly rejected by Special Court with an intention to have right of fair and speedy trial to accused, so also the right of prosecution to proceed to record the evidence of PW-1 without denying the trial.

33. The judgment of this Court in the matter of ***Boman. P. Irani and another*** (supra), particularly paragraphs-3,4, 5 and 8 are also required to be taken to be recourse to, which provides that the procedure as was adopted by learned Special Court in the present matter with that of tentatively marking exhibits and then to decide admissibility of the said documents in evidence at the time of final hearing of the trial, is very much permissible in law.

34. This Court, in the matter of ***Hemendra Rasiklal Ghia*** (supra) had again an occasion to consider similar issues as regards the procedure to be followed by learned Court while recording of evidence. Paragraphs-84 to 87 of the said judgment are worth relying upon, which reads thus:

“84. Now the question arises as to which of the two views this Court should follow. The view expressed in Bipin Shantilal Panchal (supra) by the Apex Court is based on the

peculiar factual matrix arising out of criminal trial which was prolonged for almost 10 (Ten) years in breach of fundamental right of the accused under Article 21 of the Constitution of India guarantying speedy and expeditious trial. The same view was followed in the case of State v. Navjot Sandhu (supra) involving more or less similar facts surfaced in a criminal trial. The question referred for our consideration arises out of civil proceedings governed by the provisions of the C.P.C. It is well settled that if certain things are required to be done by the Statute in a specific manner, then it cannot be done in any other manner as ruled by the Apex Court in the case of Emperor Nazir Ahmed v. King Emperor, AIR 1936 PC 243; State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358 followed by this Court in Vanmala S. Aney Khamgaon v. National Education Society, Khamgaon, 1982 Mh.L.J. 403. Thus, mandate of Order XIII Rules 3 and 4 read with Order XVIII Rule 4(1) and consensus of judicial opinion compel us to fall in line with the view expressed in R.V.E. Venkatachalam Gounder and Smt. Dayamathi Bai v. K.M.Shaffi (both cited supra).

85. Apart from the above, the principles of stare decisis squarely applies to the case on hand. In Nath Mishri Lal v. Dharendra Nath, (1999) 4 SCC 11 (paras 14-22), the Supreme Court referred to its earlier decision in Maktul v. Manbhari, AIR 1958 SC 918 on the scope of doctrine of stare decisis with reference to Hulsbury's Laws of England and Corpus Juris Secundum and held (at SCC p.18 para-14) that-

"a decision which has been followed for a long period of

time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority other than the court establishing the rule, even though the court before whom the matter arises afterwards might be of a different view."

86. Assuming that it is possible to take different view or work out different procedure as suggested in Panchal Bipin Shantilal Panchal; as long as long as principle laid down in Perumal P.C. Purushothama Reddiar v. S.Perumal; Gounder R.V.E. Venkatachalam Gounder; and Smt.Dayamathi Bai v. K.M.Shaffi (all cited supra) has been consistently followed in our country in civil matters, as observed in Mishri Lal (supra), it will be worthwhile to let the matter rest since a large number of parties have modulated and continue to modulate their legal relationships based on the settled law.

87. However, by way of exception, the objection relating to the admissibility of the document requiring resolution of complex issues, having effect of arresting progress of the matter, or if the admissibility of the evidence is dependent on receipt of further evidence, then, in such cases the trial Court can, in the interest of justice, defer the issue of deciding admissibility of the document. In Ram Ratan v. Bajarang Lal (supra), the Supreme Court has also observed that in a given circumstance a document can be exhibited with the endorsement made by the learned trial Judge "objected, allowed subject to objection", not been clearly indicating that the objection has judicially determined and the document was

tentatively marked. This procedure is to be followed only in exceptional circumstances. Ordinarily, the objection to the admissibility of the document should be decided as and when raised without reserving the question as to admissibility of the document until final judgment in the case. We may make it clear that omission to object to a document, which in itself is inadmissible in evidence, would not constitute such document in evidence. It is also duty of the Court to exclude all irrelevant evidence even if no objection is taken to its admissibility by the parties. The question of relevancy of the document being a question of law can be raised and decided at any stage of the proceeding.”

35. Though attention of this Court is invited to the judgment of this Court in the matter of **Geeta Marine Services** (supra), which has taken into account the provisions of Criminal Manual, particularly having regard to the provisions of Article 227(2)(b) and 3 of Constitution of India, having statutory force, it is required to be noted that said decision was rendered in the back ground of interpreting provisions of Criminal Manual qua the facts of said case. What is required to be noted here is that the full bench of this Court, relying upon the case of **Bipin Shantilal Panchal** (supra) has already permitted procedure of tentatively exhibiting the documents and then to decide objections as regards proof of admissibility of such evidence at the time of final hearing.

36. In my opinion, no prejudice is demonstrated to have been caused to the petitioners, who are claiming that their objections to the evidence of PW-1, particularly in the matter of marking of exhibits be decided at the time of recording of evidence itself, as it is always open for the petitioners to canvass their grievance as regards admissibility of evidence at the time of final hearing of the trial. The reliance placed on the judgment of the Apex Court in the matter of **R.V.E Venkatachala Gounder** (supra) is also considered in the matter of **Geeta Marine Services** (supra). However, in my opinion, law as is laid down in the judgment of **R.V.E Venkatachala Gounder** (supra) which speaks of two categories of objections to the admissibility of documents and then further clarifies that even though the document is marked exhibit and objection to the admissibility is not excluded and is available to be raised even at later stage or even in appeal or revision. Paragraph-20 of the said judgment is worth reproducing, which reads thus:

“20. The learned counsel for the defendant-respondent has relied on *The Roman Catholic Mission Vs. The State of Madras & Anr.* AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the

correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the

evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.”

37. As a consequence of above, in my opinion, even if the scheme of Evidence Act is considered and evidence of PW-1 as is recorded and further permitted to be recorded, the petitioners will not be put to any prejudice, as I noticed no illegality in the matter. All these writ petitions, as such fail, stand dismissed.

[N.W. SAMBRE, J.]