

(1)

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

CRIMINAL WRIT PETITION NO. 400 OF 2016

1. Rajendra @ Satish Babasaheb Zingare,
Age 22 years, Occupation-Agriculture,
R/o Khandavi, Tq. Georai,
Dist. Beed
(At present in judicial custody in District
Prison, Beed)

2. Rahul s/o Sudam Zingare,
Age : 20 years, Occupation-Student,
R/o Khandavi, Tq. Georai,
Dist. Beed

..PETITIONERS
(Accused No.1 & 2)

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 : 30th March, 2016

ORDER :

The petitioners-accused, who are facing trial for an offence punishable under section 302 read with section 34 of the Indian Penal Code, in Sessions Case No.133 of 2014 before learned Additional Sessions Judge, Beed, moved an application, pursuant to the provisions of sections 231 (2) and 273 of the Code of Criminal Procedure, praying twin reliefs; (a) that the cross-examination of the prosecution witnesses be recorded in presence of the accused and that cross-examination of the

(2)

witness, pursuant to section 231 (2) of the Code of Criminal Procedure (for short "Code"), be deferred on the ground that both eye-witnesses are required to undergo examination-in-chief first and then only cross-examination of the witnesses could be conducted.

2. Mr Salunke, learned Counsel appearing on behalf of the petitioners-accused would submit that the same is necessary for fair trial of the accused and order passed by the Court below rejecting the said application, particularly, for, deferring cross-examination pursuant to the provisions of sub-section (2) of section 231 of the Code suffers from non application of mind, as the order impugned lacks reasons. In support of his contention, learned Counsel has invited my attention to the judgment of this Court in the matter of **Dattu Uttam Punde & ors. vs. State of Maharashtra**, reported in **2015 (1) Bom.C.R. (Criminal) 742**. According to him, if the order lacks the reasons, the only option available is to remit the matter back to Sessions Court, with a direction to decide the same afresh by recording appropriate reasons. He would then submit that the order must speak of the reasons as the same reflects application of mind of the Presiding Officer while considering the claim brought before him and to that effect has drawn support from the judgment of the Apex Court in the matter of **Board of Trustees of Martyrs Memorial Trust & anr. vs. Union of India**, reported in **(2012) 10 SCC 734**, particularly from paragraph 22. The observations of the Apex Court in paragraph 22 read thus :-

"Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor brief orders

(3)

are always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves."

3. Learned Addl. Public Prosecutor opposed the application on the ground that the prosecution is the master of trial, in the sense, the order in which and the manner in which a witness is to be examined totally lies in its discretion. He would then submit that the application is rightly rejected by the Court below, having regard to the approach of the petitioners-accused as reflected in the application and as recorded in the order. He prayed for dismissal of the petition.

4. With the assistance, I have perused the application Exh.44, the say thereto on behalf of the prosecution and the order impugned dated 4th March, 2016, passed by the learned Additional Sessions Judge rejecting the prayer.

5. It is required to be noted that the petitioner has moved the application under section 231 (2) of the Code seeking deferring of cross-examination of the witnesses, whose examination-in-chief is already over. While seeking deferring of cross-examination, if the prayer made in Exh.44 is perused in the background of the pleadings raised in the said

(4)

application, there is hardly any ground taken by the petitioners in the said application. Even if it is presumed that the petitioners are not required to state the ground in specific terms, still the mind of the accused or their Counsel for seeking such deferring of cross-examination must spell out from the language employed in the application.

6. Upon perusal of application Exh.44 and considering cumulative reading of the pleadings raised therein, *prima facie* an impression can be gathered that the petitioners-accused are interested in protracting the trial, that too by refusing to cross-examine the witnesses, whose examination-in-chief was already over. Though the learned Additional Sessions Judge has insisted upon the petitioners to proceed further with cross-examination, for one or the other reason, the directions from the Court were not adhered to, prompting the learned Additional Sessions Judge to take recourse to the provisions of section 309 of the Code. The learned Additional Sessions Judge has recorded that the presence of the accused could be taken note of by virtue of video conferencing, still the petitioners insisted that the accused must personally remain present during the course of recording of cross-examination. From the above observations, it could easily be inferred that the intention of the accused is not to co-operate with the Court in expeditious decision of the trial, but to protract the same.

7. It is further required to be noted that, perhaps the above referred conduct of the accused has prompted the Court not to accede to their request, particularly made under section 231 (2) of the Code, for deferring

(5)

cross-examination of the witness. Though the order does not speak of express/clear reasons for refusing the said request, still the conduct of the petitioners-accused as narrated herein above, has rightly prompted the learned Additional Sessions Judge to reject their request.

8. Reliance placed by the learned Counsel appearing on behalf of the petitioners on the judgments of this Court in the matter of Dattu (supra) and that of the Apex Court in the matter of Board of Trustees of Martyrs Memorial Trust & anr. (supra), in my opinion, is hardly of any assistance to them, particularly having regard to their conduct. No case for interference in extraordinary jurisdiction is made out. Thus, Criminal Writ Petition fails and stands rejected.

(N.W. SAMBRE, J.)

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