

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

CRIMINAL WRIT PETITION NO.792 OF 2016

Kailas s/o Fulsing Kakarwal,
Age 42 years, Occu. Business,
R/o Phulambri, Taluka Phulambri,
District Aurangabad

..Petitioner

Versus

The State of Maharashtra

..Respondent

Mr Rupesh Jaiswal, Advocate h/f Mr N.S. Ghanekar, Advocate for
applicant
Mr S.G. Karlekar, A.P.p. for respondent-State

CORAM : V.K. JADHAV, J.

DATE : 26th July 2016

PER COURT

Heard both sides.

2. Being aggrieved by the order passed by the Additional Sessions Judge, Aurangabad dated 28th April 2016, below Exh.80 in Sessions Case No.12 of 2013, the original accused has preferred this writ petition.

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

4. Petitioner is accused No.1 in Sessions Case No.12 of 2013 pending before learned Additional Sessions Judge, Aurangabad, for the offence punishable under Section 302 read with Sec.34 of the Indian Penal Code. The petitioner is charged along with other three accused persons and prosecution has examined Dr.Rathod as P.W.8 on 14th December 2015, however, on that day, the petitioner/accused No.1 submitted an application for adjournment. The said application came

to be rejected and the accused-in-person also declined to cross-examine the doctor. The prosecution also examined P.W.9 - Dr. Milind Dunakhe on 17th February 2016, however, on the said date, the defence has filed an application seeking adjournment on the ground that the copies of the medical papers submitted through this witness are not the part of the charge-sheet and the copies of the said medical papers are not supplied to the defence in advance. That application also came to be rejected. Consequently, the petitioner/accused No.1 has filed application at Exh.80 for recalling of P.W.8 and P.W.9 for cross-examination. The prosecution has strongly resisted the said application and the learned Additional Sessions Judge, Aurangabad, by impugned order dated 28th April 2016 rejected the said application. Hence, this writ petition.

5. Learned Counsel for the petitioner submits that the petitioner/original accused is charged for serious offence of murder and every opportunity to defend his case should be extended to him. Learned Counsel submits that so far as P.W.8 Dr. Rathod is concerned, the adjournment application came to be rejected and the petitioner/accused No.1 was asked to cross-examine the said doctor. It was not possible for the petitioner/accused No.1 to cross-examine the doctor in absence of his Counsel. So far as the cross-examination of P.W.9 Dr.Milind Dunakhe is concerned, after recording his examination-in-chief, the petitioner/accused No.1 has filed an application for adjournment on the ground that the copies of medical papers submitted before the Court by witness Dr. Dunakhe are not supplied to the petitioner/accused No.1 in advance. Learned Counsel

further submits that even though the learned Additional Sessions Judge has rejected the said application and further rejected the application Exh.80 on the ground that the application for recalling those witnesses is not justifiable. It has further observed that the witnesses are doctors by profession and it will not be proper to call them repeatedly merely to facilitate the defence Counsel as per his convenience.

6. Learned A.P.P. submits that so far as the adjournments sought by the petitioner/accused No.1 for cross-examination of witness P.W.8 Dr.Rathod is concerned, no grounds are mentioned in the said application and the learned Additional Sessions Judge has, therefore, rightly rejected the same. He further submits that the copies of medical papers submitted by P.W.9 Dr. Milind Dunakhe were already supplied to the defence and the learned Additional Sessions Judge has, therefore, rightly rejected the said application. Learned A.P.P. submits that no case is made out for recalling the said witnesses, hence no interference is required.

7. It appears from the record that the petitioner/accused No.1 and the other accused are charged for serious offence of murder. Though the adjournment applications filed by the Counsel appearing for the petitioner/accused No.1 before the Sessions Court came to be rejected on the grounds, as mentioned in the order, the opportunity is required to be extended to the petitioner/accused No.1 to cross-examine those witnesses.

8. Learned A.P.P. submits that the case is now posted on 28th July 2016 for evidence. This Writ Petition can be disposed of by permitting the petitioner/accused No.1 to cross-examine the said witnesses on certain conditions. In view of the above, I proceed to pass the following order:

ORDER

(I) Writ Petition is hereby allowed.

(II) The impugned order dated 28th April 2016 passed by the Additional Sessions Judge, Aurangabad below Exh.80 in Sessions Case No.12 of 2013 is hereby quashed and set aside. Application Exh.80 is allowed in terms of its prayer clause.

(III) The petitioner/accused No.1 shall cross-examine P.W.8 Dr. Rathod and P.W. 9 - Dr. Milind Dunakhe on the given dates without fail and the petitioner/accused No.1 is not permitted to seek any adjournment on any ground for cross-examination of those witnesses.

9. Criminal Writ Petition is accordingly disposed of.

10. Parties to act upon the authenticated copy of this order.

(V.K. JADHAV, J.)

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