

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

CRIMINAL WRIT PETITION NO. 1536 OF 2016

1. Sachin s/o Suresh Pagare
Age : 26 Yrs., Occ. : Labour,
R/o : Milind Nagar,
Osmanpura, Aurangabad.

2. Anil s/o Pralhad Badade
Age : 21 Yrs., Occ. Labour,
R/o : Milind Nagar, **PETITIONERS/**
Osmanpura, Aurangabad. **[ACCUSED]**

VERSUS

The State of Maharashtra **RESPONDENT**

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Mr. K.S.Kahalekar, Advocate for Petitioners.

Mr. K.S.Hoke Patil, A.P.P. for Resp. - State.

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CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT : 1st DECEMBER, 2016

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ORAL JUDGMENT :

01. Heard Mr. K.S.Kahalekar, learned Advocate for the Petitioners and Mr. K.S.Hoke Patil, learned A.P.P. for Respondent - State.

02. Rule. Rule made returnable forthwith.

03. The petitioners/accused have challenged the Order passed by the learned Additional Sessions Judge rejecting the application filed by them for recalling the witness.

04. The observations of the learned Additional Sessions Judge shows the calculated move on the part of the accused to delay the matter. However, to give an opportunity to the accused, the learned Advocate appearing for the accused was asked to enquire whether the accused are willing to deposit the amount of Rs. 20,000/- [Rupees Twenty Thousand] to show bonafides. The matter was kept back. The learned Advocate for the petitioners/accused states

that the accused are willing to deposit the amount of Rs. 20,000/- before the Sessions Court.

05. Though the impugned order can not be faulted with, to give an opportunity to the accused, the following order is passed :

- (i) The impugned Order is set aside.
- (ii) The request of the accused to recall the Investigating Officer for cross examination is granted subject to depositing Rs. 20,000/- before the Sessions Court.
- (iii) If the amount of Rs. 20,000/- is deposited before the Sessions Court within 15 days from today, the learned Additional Sessions Judge shall recall the Investigating Officer to enable the accused to cross examine him. It is undertaken on behalf of the accused that the witness will be cross

examined on the date on which the witness remains present. If the accused fails to deposit Rs. 20,000/- within 15 days or fails to cross-examine the witness on the date on which he remains present, the accused shall lose the opportunity of cross examining the witness and the learned Additional Sessions Judge shall proceed further in the matter.

- (iv) The learned Additional Sessions Judge may pass appropriate order regarding disbursement of Rs.20,000/- which may be deposited by the accused as per this order.
- (v) Criminal Writ Petition is disposed of in the above terms.

[Z.A.HAQ, J.]