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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.79 OF 2016

Sagar Anand Chavan and Anr.

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr.Kedar Patil, for the Applicants

Mr.D.P.Adsule A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 16th APRIL, 2016

P.C. :

1. Heard learned Counsel for the applicants and the learned A.P.P.
2. By this application, the applicants seek quashing and setting aside of the order dated 29th December, 2015 passed by the learned District Judge – 1 and Additional Sessions Judge, Sangli, below Exhibit – 63 in Sessions Case No.246 of 2013.
3. Learned Counsel for the applicants submitted that the prosecution case rests on the dying declaration made by the deceased to the

Special Executive Magistrate, which is on page 65 of the application. He submitted that in the course of the trial, the Special Executive Magistrate was examined as PW-4 by the prosecution. He submitted that after the evidence of the prosecution was over and after the defence witness was examined, the applicants filed an application seeking recall of PW.4 for further cross-examination, on the ground that they had learnt of a dying declaration written by PW.4, which is on page 69 of the application. He submitted that PW.4 - Mangal C. Malap, had categorically in her evidence stated that the dying declaration which is on page 65 is in her handwriting, however the document i.e. another dying declaration, which is on page 69, is also alleged to have been written by the same witness. He submits that on the face of it, the handwriting on both the documents is different. He submitted that hence in the interest of justice, the applicants be given an opportunity to cross examine the said witness. He submitted that no prejudice will be caused to the prosecution, if the said witness is examined. He relied on the judgment in the case of ***P.Sanjeeva Rao v/s State of Andhra Pradesh***,¹ in support of his submission.

¹ (2012) 3 SCC (Cri)

4. Learned APP opposed the application. However he submitted that if the Court is inclined to allow the application, costs may be imposed on the applicants.

5. Perused the order dated 29th December, 2015 passed by the learned District Judge – 1 and Additional Sessions Judge, Sangli, below Exhibit – 63 in Sessions Case No.246 of 2013. It is stated in the said application seeking recall of PW.4 – Mangal, that it is necessary to recall her, considering the fact that she has categorically deposed that the dying declaration in the present case was handwritten by her. It is stated that on enquiry being made in the office, they learnt that the said dying declaration has not been written by the said witness. He submitted that the handwriting in both the dying declarations i.e. on page nos.65 and 69, is different and hence it is necessary to cross-examine PW.4 on this aspect. No doubt, there is a delay in producing the said document. However, considering what is alleged in the application, it would be necessary in the interest of justice to permit the applicants confront PW.4 with the said document. What also cannot be lost sight of is that the object of a criminal trial is to ensure a fair trial to the accused, to ascertain truth and to grant an opportunity to the

accused to prove his innocence.

6. Considering the aforesaid, the application is allowed and the impugned order dated 29th December, 2015 passed by the learned District Judge – 1 and Additional Sessions Judge, Sangli, below Exhibit – 63 in Sessions Case No.246 of 2013, is quashed and set aside and the applicants are permitted to recall PW.4, only for the purpose of cross-examining her on the document, which is on page 69 of the application.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the applicants will bear the costs of summoning of the witness, as may be ordered by the learned Sessions Judge.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.