

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 661 OF 2015
WITH
CRIMINAL APPLICATION NO. 55 OF 2016

Tanaji Namdev Thombare. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Tejas Hilage, advocate appointed for Applicant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JANUARY 28, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 This is an application through jail filed by accused Tanaji
Namdev Thombare, who is an accused in Sessions Case No. 57 of
2011 pending before the Additional Sessions Judge, Sangli. The
applicant is charged for having committed offence punishable under
Section 302, 309 read with Section 34 of the Indian Penal Code.

4 It appears that initially the applicant had engaged senior
advocate Dhairyasheel Patil to espouse his cause. However, Shri Patil
could not make it convenient to attend each and every date and
therefore, the applicant had prayed for advocate from the legal aid to
espouse his cause. The Additional Sessions Judge had appointed
advocate Shri Rajkumar B. Patil to espouse the cause of the applicant.
It is further contended by the applicant that initially advocate Shri
Patil had assured to him that he would study the charge-sheet
meticulously and try his level best to espouse the cause of the
applicant. That on 4/9/2015 the Court was recording evidence of Dr.
Chougule. At the stage of cross-examination, advocate Shri Patil had
simply adopted cross-examination of the advocate for co-accused.

That after recording of substantive evidence of Dr. Chougule was completed, the applicant gathered his courage to ask Shri Patil as to why he has not cross-examined Dr. Chougule. At that stage, advocate Patil had informed the applicant that he had no time to go through the compilation of the charge-sheet and therefore, he was unable to cross-examine Dr. Chougule. That he could not seek extension of time or adjournment, as he was aware that the court would not have granted time for studying the charge-sheet. Thereafter, the advocate had reacted that he should not teach him how to conduct court case and had informed the applicant that he was not paid by the applicant and he had been appointed by the court and therefore, it is none of the business of the applicant to question him as to why cross-examination was not conducted properly or in accordance with law. The applicant had therefore, sought transfer of the matter. The applicant appears to have grievances against the advocate appointed through legal aid.

5 This Court has requested Advocate Shri Tejas Hilage to espouse the cause of the applicant. The learned Counsel appointed for the applicant has placed reliance upon the Judgment of the Hon'ble Division Bench of this Court in the case of **Sunil Damodar Gaikwad v/s. State of Maharashtra reported in 2010 Cri. L.J. 740.** It is submitted that the Hon'ble Division Bench had remanded the matter to the trial court in order to see that the accused faces a fair trial. It was also considered that while appointing an advocate through legal aid, it is incumbent upon the Court to see the professional record of the advocate appointed through legal aid. That the Court had observed as follows :

“This case provides an opportunity to remind the learned District and Sessions Judge conducting sessions trials. more particularly relating to serious offences involving severe sentences, to appoint experienced lawyers who had conducted such cases in past. It is desirable that in such cases Senior Advocate practising in the Court shall be requested to conduct the case himself or herself on behalf of the undefended accused or at least provide good guidance to the advocate who is appointed as amicus curiae or an Advocate from the legal aid

panel to defend the case of the accused persons. Then only the effective and meaningful legal aid would be said to have been provided to the accused.”

6 It is true that it is incumbent upon the Court to give proper legal aid to undefended accused in order to see that the justice appears to have been done. The learned Counsel appointed for the applicant has rightly submitted that Article 39 A of the Constitution speaks about free legal aid which reads thus :

“Art. 39A. The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

7 The Learned Counsel for the applicant therefore, submits that it is necessary to appoint an advocate who has sufficient experience at Bar or an advocate who has the passion of working for the undefended accused persons and put in the best of efforts to espouse

the cause of the accused of the accused by taking proper, legal and procedural guidance is necessary. The efforts taken by the advocate Shri Tejas Hilage are appreciated.

8 The applicant has also prayed that he may be granted liberty to appoint an advocate of his choice to appear on his behalf. The said prayer can be granted in the interest of justice as the accused has a right to fair trial and to demonstrate before the court that the charges against him cannot be proved. In view of this, the application deserves to be disposed of with necessary directions.

9 The learned APP has placed on record the report submitted by the Superintendent of Central District Prison, Sangli. It is submitted that the prosecution has filed evidence close purshis. The next scheduled date is 2/2/2016 which is scheduled for recording the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973. The applicant can be granted liberty to submit his

statement under Section 313(5) of the Code of Criminal Procedure, 1973. The Court shall permit the accused to file Written Statement.

10 Hence, the following order is passed:

ORDER

(i) The applications are partly allowed.

(ii) The learned Additional Sessions Judge shall grant liberty to the accused to engage an advocate of his choice, as is prayed in prayer

(d) which reads thus :

(d) To permit the Applicant in the alternative to appoint a lawyer of his choice or appear in person.

(iii) The learned Additional Sessions Judge shall permit the accused to file written statement as is contemplated under Section 313(5) of the Code of Criminal Procedure, 1973.

(iv) The Scheduled date 2/2/2106 be postponed by one week i.e. 9/2/2016 in order to enable the accused applicant to take necessary steps.

11 The applications cannot be disposed of without recording appreciation for the efforts taken by the learned Advocate Shri Tajas Hilage to espouse the cause of the applicant. His professional fees are quantified at Rs. 4,000/- to be paid to him within 3 months from today.

12 Office to communicate this order to Additional Sessions Judge, Sangli seized with the Sessions Case No. 57 of 2011 forthwith.

13 With these directions, both the applications stand disposed of.

(SMT. SADHANA S. JADHAV,J)