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

CRIMINAL APPLICATION NO.32 OF 2017

1. Bhimrao Vinayak Pawar,
Age: 68, Occ: Agri.,
2. Udhav Bhimrao Pawar,
Age: 35, Occ: Agri.,
3. Arjun Bhimrao Pawar,
Age: 31, Occ: Agri.,
4. Anil Bhimrao Pawar,
Age: 28, Occ: Agri.,

All R/o. Khatkheda,
Tq. Knnad, Dist. Aurangabad. ..APPLICANTS

VERSUS

The State of Maharashtra
through Investigating Officer
Pishare Police Station,
Tq. Kannad, Dist. Aurangabad
& anr. ..RESPONDENTS

Mr R.J. Nirmal, Advocate for applicants;
Mr V.S. Badakh, Addl. Public Prosecutor for
respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 18th JANUARY, 2017

ORAL ORDER :

The application Exhibit-33 in Regular

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Criminal Case No. 47 of 2013 pending on the file of Court of learned Judicial Magistrate, First Class, (Court No.3). Kannad came to be rejected on 24th November, 2016, whereby prayer for recalling PW-2 and PW-3 pursuant to the provisions of Section 309 of the Code of Criminal Procedure came to be rejected.

2. It is no doubt that examination in chief of PW-2 and PW-3 was over and the Counsel of the accused was not available to examine the said witnesses. As such, learned magistrate has rightly ordered no cross examination and proceeded further.

3. In my opinion, I hardly see any mistake or illegality in the approach of learned magistrate.

4. However, what could be noticed is, if the cause cited that of absence of lawyer is genuine then default on the part of lawyer shall not cause the prejudice to the litigant. Apart from above, what is required to be noted is, the accused are required to be given fair opportunity to defend

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themselves.

5. In this background, in my opinion, in the interest of justice, one chance is required to be given to the applicants, as learned Counsel for the applicants, upon instructions, given undertaking that the applicants shall not seek any adjournment before learned magistrate in the aforesaid case till conclusion.

6. In view thereof, Criminal Application is allowed. The order passed below Exhibit-33 Regular Criminal Case No. 47 of 2013 is quashed and set aside subject to payment of costs of Rs.2000/- (Rs. Two thousand only) to be deposited before learned magistrate within a period of two weeks from today. The undertaking is accepted. The applicants will be at liberty to cross examine PW-2 and PW-3 to whom the magistrate shall take appropriate steps for their presence.

(N.W. SAMBRE, J.)