

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 578 OF 2016
WITH
CRIMINAL APPLICATION NO. 2485 OF 2016

The State of Maharashtra,
Through Police Station Ashti,
Dist. Beed.

....Petitioner.

Versus

1. Rajaram Appana Mane,
Age 57 years, R/o. Ghogde Wasti,
Bhawani Peth, Solapur.
2. Sachin Vitthal Suryawanshi,
Age 28 years, R/o. Kerul,
Tq. Ashti, Dist. Beed.
3. Dinesh Vitthal Kekan,
Age 32 years, R/o. Hanuman
Nagar, Manmad, Tq. Nandgaon,
Dist. Nasik.
4. Shaikh Adam Sk. Akbar,
Age 37 years, R/o. Shivneri
Colony, Ranjangaon,
Shembapunji, Tq. Gangapur.
5. Krushna Mohan Sable,
Age 24 years, R/o. Kerul,
Tq. Ashti, Dist. Beed.
6. Sandeep Murlidhar Kale,
Age 20 years, R/o. As above.
7. Dadasaheb Haribhau Falle,
Age 25 years, R/o. As above.
8. Navnath Baban Jawane,
Age 24 years, R/o. Beedsangvi,
Tq. Ashti, Dist. Beed.
[Deleted as per Order of this
Court dated 16.12.2016].

9. Nitin Sanjay Shinde,
Age 25 years, R/o. Bayejabai
Jeur, Ahmadnagar.
10. Sayyad Gaus Sayyad Noor,
Age 22 years, R/o. Surya
Nagar, Aurangabad Road,
Ahmadnagar.
11. Bhausahab Mohan Sable,
Age 28 years, R/o. Kerul,
Tq. Ashti, Dist. Beed.
12. Mahendra Sevakram Mahajan,
Age 24 years, R/o. As above.
13. Ashok Haribhau Falle,
Age-, R/o. As above.
14. Krushna Baburao Kshirsagar,
Age-, R/o. As above.
[Deleted as per Order of this
Court dated 16.12.2016].

....Respondents.

Mr. G.O. Wattamwar, APP for petitioner/State.

Mr. Satej S. Jadhav, Advocate for respondent No. 4.

Mr. A.V. Rakh, Advocate for respondent No. 6.

Mr. G.K. Naik-Thigale, Advocate for respondent Nos. 7 and 13.

Mr. S.J. Salunke, Advocate for applicant in Cri.Appln No. 2485/16.

CORAM : T.V. NALAWADE, J.

DATED : 23rd January, 2017.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The proceeding is filed by the State to challenge the

order made by the learned Additional Sessions Judge, Beed on Exh. 234 filed in Sessions Case No. 16/2012. The application was filed under section 231 of Criminal Procedure Code. Chargesheet is filed for offences punishable under sections 302, 307, 149 etc. of Indian Penal Code. The submission made show that probably the application was filed by accused Nos. 1 to 4 through their advocate. Though in the writ petition it is shown that report in respect of service on respondent Nos. 2, 5, 9 to 12 is not received, the proceeding of Criminal Application No. 2485/2016 shows that these respondents are served. This Court has no hesitation to observe that the accused persons, who have got the relief, who are represented by counsel are trying to protract the things by not showing appearance in the present matter. However, for the other three accused, who are facing trial, three counsels have filed appearances. They are heard. Out of them, two accused are on bail and one accused is kept in jail.

3) The contents of application filed under section 231 of Cr.P.C. are as under :-

"That, an application is filed on behalf of the accused is as under.

That, prosecution has shown six eye witnesses as per the charge-sheet but out of them complainant is being examined today.

That, any of the facts and the material

record, it is requested that, the cross examination of the P.W. No. 1 namely Pravin Bhausahab Gondkar may kindly be deferred until other witnesses are examined."

For allowing the application, following reasoning is given by the learned Judge of the Trial Court.

"I have gone through the prosecution story and it reveals that if the cross-examination of any one of the eye witness is taken without recording the statement of other eye witnesses, then it will seriously affect to the defence of accused."

4) The submissions made show that probably the accused feel that some witnesses may feel lacuna which may be there in the evidence of first informant. The submissions made show that names of some accused were not there in the F.I.R. and two accused, who were mentioned in the F.I.R. are discharged. The submissions made show that there are five eye witnesses in the case and it is a case of murder and also the case of attempt of murder of other person. That person is there to give evidence.

5) The provision of section 231 of Cr.P.C. runs as under :-

"231. Evidence for prosecution.- (1) On the

date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination."

Section 231 (2) of Cr.P.C. gives discretion to the Court to defer cross-examination of any witness or witnesses until any other witness or witnesses have been examined. This provision does not mention that it is made to avoid prejudice to accused. If the scheme of Cr.P.C. is considered, it can be said that it is choice of prosecution to examine the witnesses in any order and further, it is choice of prosecution even to drop some witnesses. When there is such choice with the prosecution, the Court cannot decide the manner in which the examination of witnesses will go on.

6) It cannot be accepted that if examination and cross examination of one witness is completed, prejudice will be necessarily caused to the accused. This is because there are sufficient checks available in Cr.P.C. and in Evidence Act. If witnesses are changing version in Court and different version

was given before police, it is always open to the defence to bring that inconsistency, omission or addition on the record. In view of this procedure, it cannot be said that prejudice will be caused to the accused if one witness is examined and cross-examined first in time. Thus, it can be said that the order made by the learned Judge of the Trial Court is under some misconception. The accused has no such right. Further, no specific reasons are given either in the application given by the accused or in the order made by the learned Judge of the Trial Court.

7) The learned APP placed reliance on the observations made by the Apex Court in the case reported as **AIR 1984 SUPREME COURT 618 [Lt.Col.S.J. Chaudhary Vs. State (Delhi Administration)]** and submitted that once the trial commences, it should be conducted on day to day basis and the provision of section 231 of Cr.P.C. cannot be used for protracting the trial. It can be said that in the present matter, in one way the decision of the matter will be protracted due to the aforesaid order. Such order also gives scope to the accused to tamper with the prosecution witnesses. In a criminal case, it is always desirable that the witnesses are examined as early as possible when their memory is fresh and when there is no opportunity to the accused to tamper with the prosecution witnesses. This also

needs to be kept in mind by the Criminal Court.

8) Reliance was placed by the learned APP on the case reported as **2009 CRI.L.J. 1215 [Shamoon Ahmed Sayed and Anr. Vs. Intelligence Officer, Narcotic Control Bureau South Zonal Unit, Chennai]**. In this case, the High Court has discussed the probable situations where the provision of section 231 (2) of Cr.P.C. can be used. The situations are quoted in para Nos. 6 and 8. Though the observations are of persuasive nature, this Court agrees with the aforesaid observations made by the Karnataka High Court. This Court has no hesitation to hold that the learned Judge of the Sessions Court has committed serious error in deferring the cross-examination of the P.W. No. 1.

9) In the result, the petition is allowed. The order made by the learned Judge of the Sessions Court, Beed on Exh. 234 in Sessions Case No. 16/2012 is hereby set aside and the application filed for accused for deferring the cross-examination stands rejected. Criminal application is also disposed of.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/