

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

CRIMINAL APPLICATION NO. 3527 OF 2016

Rajaram s/o Sayaji Narote,
Age 35 years, Occu. Agri.,
r/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed

.. Applicant

Versus

1. The State of Maharashtra
2. Lahanu Babu Kokare,
Age 55 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
3. Rangnath Nana @ Tukaram Kokare,
Age 62 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
4. Rohidas Babu Kokare,
Age 50 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
5. Bhausahab Lahanu Kokare
Age 30 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
6. Chandrakant Lahanu Kokare,
Age 23 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
7. Mithu Babu Kokare,
Age 49 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
8. Navnath Babu Kokare,
Age 45 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
9. Dada Babu Kokare,
Age 60 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),

Taluka Ashti, District Beed

10. Bhausaheb Nana @ Tukaram Kokare,
Age 50 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed
11. Babasaheb Rangnath Kokare
Age 27 years, Occu. Agri.,
R/o Kokarewadi (Dadegaon),
Taluka Ashti, District Beed .. Respondents

Mr S.D. Hiwarekar, Advocate for applicant
Mr R.V. Dasalkar, A.P.P. for respondent no.1-State
Mr D.G. Nagode, Advocate h/f Mr B.B. Kulkarni, Advocate for
respondents no.2 to 11

CORAM : A.M. DHAVAL, J.

DATE : 30th November 2017

ORAL JUDGMENT

1. Rule. Rule returnable forthwith. With the consent of learned Counsel for the parties, matter is taken up for final disposal.
2. This is an application filed by the applicant for invoking powers under Section 482 of the Code of Criminal Procedure, 1973 challenging the impugned order passed by the Judicial Magistrate, First Class, Ashti, below Exh.172 in Regular Criminal Case No.209 of 2010 dated 21st April 2016.
3. The accused are charged for the offences punishable under Sections 147, 148, 149, 324, 325, 447, 504 and 506 of the Indian Penal Code. Four witnesses (1) Murlidhar Sayaji Naroti (2) Sayaji Hira Narote (3) Babasaheb Sayaji Narote (4) Rajaram Sayaji Narote were injured and medical certificates are brought on record. Murlidhar has sustained depressed high parietal bone with contusion, diffuse

cerebral oedema. The informant had appeared to assist the learned A.P.P.

4. The Medical Officer was summoned. As he had not brought the necessary documents and register, he was sent back on 21st November 2015. On the next date i.e. 20th January 2016, he appeared along with necessary documents but the learned A.P.P. and Court refused to examine him. Hence, the informant filed application at Exh.172 for his examination under Section 311 of the Code of Criminal Procedure. The said application came to be rejected on two grounds.

(I) There is no provision in Code of Criminal Procedure to permit the applicant to file such application as he has no locus standi;

(II) In spite of sufficient opportunities, the Medical Officer was not examined and evidence of the prosecution was closed.

3. Heard the learned Advocate Mr S.D. Hiwrekar for the applicant, Mr R.V. Dasalkar, A.P.P. for respondent no.1-State, Mr D.G. Nagode, Advocate holding for Mr B.B. Kulkarni for respondents no.2 to 11.

4. Since the trial in trial Court is held up, this application is disposed of expeditiously.

5. The main reason for rejection of application of the informant was that he had no locus standi. It is a totally wrong approach. Right of the informant in criminal proceedings initiated even on the police

report is quite recognised. In **J.K. International Vs. State (Govt. of NCT of Delhi), 2001 (5) Bom. C.R. 845 SC** it is observed that scheme in Code indicates that a person who is aggrieved by offence is not altogether wiped out from scene merely because police have taken over investigations.

6. In **Balasaheb Rangnath Khade and ors., Vs. State of Maharashtra, 2012 (3) Bom. C.R. (Cri.) 632**, it is observed that the importance of rights of the victims in criminal trial and allowing him to represent is highlighted. Under Section 372 of Cr.P.C. right of appeal has been provided. In **Vinay Poddar Vs. State of Maharashtra, 2008 BCI (Soft) 146**, right of the applicant to oppose application for anticipatory has been recognised. In **Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285**, it is laid down that before granting 'B' summary, the informant must be heard. In **Kishor Khanchand Wadhwani and anr. Vs. State of Maharashtra and anr., 2012 (2) Bom.C.R. (Cri) 349**, it is held that victim has right to argue at the time of discharge. In **Raosaheb Aher & Ors. Vs. Bebitai w/o Pandit Sonwane & Anr., 2009 ALL MR (Cri) 143**, it was held that when the A.P.P. has given no objection to the application of the victim, the issue of locus standi loses significance. In that case, Medical Officer was permitted to be examined and the order was upheld. In **Karam Chand Mukhi And Ors. vs Santosh Pradhan And Anr., 2004 Cr.L.J. 4380 Orissa**, in paragraph 11, it has been indirectly admitted that the victim has locus standi to apply for examination of the witnesses.

7. Record shows that the accused are prosecuted for offences of rioting and causing grievous hurt and simple hurt with deadly weapons and other offences. There are medical certificates of four witnesses, the record shows that the Medical Officer had attended the Court on 21.11.2015, but he had not brought the relevant documents/register. On next date on 20.1.2016 he appeared along with necessary documents, but learned trial Judge refused to examine him. Learned trial Judge closed the evidence of prosecution.

8. Both, the learned trial Judge as well as learned A.P.P. have acted contrary to the spirit of fair trial and the duty to deliver justice by finding out true facts. It is axiomatic that if the Medical Officer is not examined and the certificates are not proved, the accused are bound to get benefit thereof and they might be acquitted. It is, therefore, certain that examination of Medical Officer was essential for the just decision of the case. The nature of injuries also indicate whether the assault had taken place as described by prosecution witnesses or not and, therefore, the proof of medical certificates may be also helpful to the defence. In fact, these certificates are essential for finding out the truth which is the duty of the trial Judge. Section 311 of Cr.P.C. empowers the trial Judge to examine any witness at any stage and imposes the duty to examine the witness whose evidence is essential for the just decision of the case. The learned trial Judge mechanically rejected the application of the applicant. In the first place, it is unfortunate that the informant had to move such application, as learned trial Judge and learned A.P.P. failed to perform their duties. On merits, the said application deserved to be allowed and the Medical

Officer should have been examined. In **Rajendra Prasad Vs. Narcotic Cell, 1999 SCC (Cri) 1062**, relying on **Jamaraj Kewalji Govani Vs. State of Maharashtra, AIR 1968 SC 178**, it is held : It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this duty and obligation of the court provided the just decision of the case demands it (Para 10). In **Masalti Vs. State of U.P., AIR 1965 SC 202**, in paragraph 11, it is held : It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case. In **Ram Mandal Vs. State of Zarkhand, 2006 Cr.L.J. 293 Zarkhand**, the case was 25 years old. There was no progress since 1993, but the offences were grave. The defence was closed in 2003. It was held that Investigating Officer and Doctor were then available and have appeared in the Court. Order of allowing their examination under Section 311 Cr.P.C. was proper. Secondly, the circumstances indicate that the issue of locus standi was not at all relevant and on technical ground, the learned trial Judge could not have denied fair opportunity to the victims to get justice. Thus, on merits as well as on technicality, the rejection of application was illegal and the impugned order, therefore, deserves to be set aside. Hence, the order:

ORDER

(I) Criminal Application stands allowed. The impugned order dated 21st April 2016 passed by learned Judicial Magistrate, First Class, Ashti

below Exh.172 in Regular Criminal Case No.209 of 2010 is hereby set aside.

(II) The learned trial Judge is directed to examine the Medical Officer/witnesses who have issued the medical certificates and then proceed with the trial as per law.

(III) Rule is made absolute in above terms with no order as to costs.

(A.M. DHAVAL, J.)

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