

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

CRIMINAL WRIT PETITION NO. 671 OF 2018

1. Balu @ Sambhaji Vastad Palve
Age : 48 years, Occu. Agriculture,
R/o. Tribhuvanwadi, Tq. Pathardi,
Dist. Ahmednagar.
2. Bacchu @ Bhaskar S/o Chagan Andhale,
Age : 37 years, Occu. Agriculture,
R/o. As above.
3. Chagan S/o Rambhau Andhale,
Age : 61 years, Occu. Agriculture,
R/o. As above.
4. Manda Vastad Palve,
Age : 50 years, Occu. Household,
R/o. As above.
5. Usha Balu @ Sambhaji Palve,
Age : 39 years, Occu. Household,
R/o. As above.

... Petitioners

VERSUS

The State of Maharashtra
Through Pathardi Police Station,
Pathardi, Dist. Ahmednagar.

... Respondent

.....
Mr P. G. Tambade, Advocate h/f Mr Santosh S. Jadhavar, Advocate
for petitioners
Mrs Vaishali S. Chaudhari, APP for respondent/State
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**CORAM : A. M. DHAVAL, J.
(Vacation Court)**

DATE : 10TH MAY, 2018.

ORAL JUDGMENT : -

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission.

2. Heard Shri. P. G. Tambade, learned Counsel h/f Mr Santosh S. Jadhavar, learned Counsel for the petitioners and Mrs Vaishali S. Chaudhari, learned Assistant Government Pleader for respondent /State.

3. The petitioners are facing prosecution u/s 326, 143, 147, 148, 149, 427, 323, 504 and 506 of the Indian Penal Code in Sessions Case No. 77 of 2013 before the learned Additional Sessions Judge, Ahmednagar and u/s 3(i)(x) and 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act by way of Sessions Case No. 77 of 2013 before the learned Additional Sessions Judge, Ahmednagar. The said cases are part-heard and the application filed by the petitioners herein dt. 11.04.2018 (Exh. 107) for summoning defence witnesses viz. Medical Officer of Shri Hospital, Tq. Pathardi, Dist. Ahmednagar and Maharashtra State Electricity Distribution Company Ltd., (MSEDCL) Pathardi, Tq. Pathardi, Dist. Ahmednagar, along with the concerned record,

was rejected. Again similar application for issuing summons was filed on 19.04.2018 (Exh. 109) but the same has also been rejected. The liberty was given to the accused to call flour mill owners as their defence witnesses.

4. The copy of FIR filed by petitioners discloses that, on 13.06.2012 at about 4:00 p.m. there was quarrel between two groups one led by Sambhaji Barde (informant) and other led by Balu Palve. The allegations in the FIR show that, Sambhaji Barde's son Maheshwar had been to a flour mill for grinding of grains but the mill was closed. That time, the petitioner No. 1 accosted him why he was taking rounds in that area and then abused him in the name of his scheduled caste. Thereafter, there was assault by means of axe and wooden log by several persons from Balu Palve's side to Maheshwar, Sambhaji Barde and others. There is counter FIR by Chhabu Andhale in respect of the incident of the same date, time and place. Chhabu Andhale is from the party of the petitioners. According to him, Ishwar Barde was taking rounds in that area in suspicious circumstances and he was accosted. Then he went home and brought six persons on two bikes and thereafter there was assault by means of sword on the skull of Chhabu Andhale. There was also assault on his father-in-law Vastad Palve by means of iron rod. It is submitted that

the accused in the FIR filed by Sambhaji Barde are the injured witnesses in the FIR of Chhabu Andhale and the accused in Chhabu Andhale's FIR are the witnesses in Sambhaji Barde's FIR. Learned APP does not dispute that these cases are counter to each other.

5. The petitioners in order to defend themselves wanted to examine the Medical Officer who had issued Medical Certificate showing injuries to the accused persons. Besides, they wanted to show that the witnesses were residing at Tribhuvanwadi where there were flour mills and Maheshwar had no reason to come to Kaudgaon for grinding of grains.

6. Normally it is for the accused persons to determine which witnesses they should examine to support their defence. The ld. Addl. Sessions Judge, Ahmednagar was aware that there was a counter case filed by the accused persons as is reflected from the order dt. 28.11.2016 below Exh. 49 but, since no charge-sheet was filed in that case, she had rejected the said application for conducting two cases simultaneously. In order dt. 11.04.2018 (Exh. 107), ld. Addl. Sessions Judge observed that, the injuries on the accused persons can be proved in the case initiated on FIR of Chhabu Andhale and there was no need to call concerned Medical Officer to prove the

injuries on the persons of the accused persons. It was also noted that, the names of the persons running the flour mills at Kaudgaon were not disclosed. She relied on the presumption of innocence of accused and burden of proof on the prosecution holding that there will be no prejudice to the accused if the application is rejected.

7. The approach of ld. trial Judge is totally wrong and against the concept of fair trial. The defence has every right to show that at the time of incident, the accused persons were also injured and that is very much relevant to consider whether they were acting in self-defence and whether the witnesses were disclosing all the true facts or not. It can affect the credibility of the witnesses if they are hiding material facts. The ld. trial Judge should not interfere with the right of the accused to examine any appropriate person as a defence witness unless his evidence is totally irrelevant or the application has been moved for protracting the trial. I, therefore, find that the rejection of the application to examine defence witnesses or to issue summons to defence witnesses is not sustainable. If such right of the accused is taken away, it will result into miscarriage of justice and, therefore, it is necessary to direct the ld. trial Judge to permit the accused to examine the witnesses.

8. Apart from this fact, it is noticed that there are counter cases filed by two parties against each other. In respect of counter cases, the law is well settled that both the cases should be conducted simultaneously by the Sessions Judge and decision should be given simultaneously. In this regard, reliance can be placed on the judgment in the case of Sudhir & Ors. etc. vs. State of M. P. reported in AIR 2001 SC 826. In this case, it is held that, even if one offence is triable by Sessions Judge and other is triable by Magistrate, still the Magistrate should commit the case to the Sessions Judge and there should be joint trial of the cases. It is obvious that, such committal cannot be u/s 209 but it can be u/s 323 of Cr.P.C. The law laid down by the Apex Court in this regard is binding on all the courts and it should be followed.

9. On instructions, ld. Assistant Public Prosecutor submits that, the charge-sheet is filed in the counter cases initiated on the basis of FIR of Chhabu Andhale and pending before the Judicial Magistrate First Class, Pathardi. The ld. JMFC should commit it u/s 323 Cr.P.C. to the Sessions Court and the Principal District and Sessions Judge, Ahmednagar should allot the said case to the same Judge before whom the counter case bearing No. 77/2013 (State vs. Balu Palve and others) against the present petitioners is pending. I

direct that the ld. Addl Sessions Judge shall follow the mandate laid down by the Apex Court in the case of Sudhir & Ors. vs. State M. P. (supra) and conduct both the cases together or one after the other and shall dispose them simultaneously.

10. Copy of this order be forwarded to Principal District and Sessions Judge, Ahmednagar and Judicial Magistrate First Class, Pathardi, for compliance. Parties to act upon authenticated copy of this order.

11. Rule is made absolute in above terms with no order as to costs.

[A. M. DHAVALA]
JUDGE

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