

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

**CRIMINAL WRIT PETITION NO.770 OF 2018**

Dnyanoba S/o Raghunath Rangire,  
Age 49 years, Occu. Agri.,  
R/o Dusalgaon, Taluka Gangakhed,  
District Parbhani. ... Petitioner

Versus

1. The State of Maharashtra  
Through Police Station, Gangakhed,  
Tq. Gangakhed, Dist. Parbhani.
2. Kashinath S/o Suryabhan Alnure,  
Age : 32 years, Occu. Agri.,  
R/o Mamta Colony, Gangakhed,  
Tq. Gangakhed, Dist. Parbhani. ... Respondents

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Mr. M.P.Kale, Advocate for Petitioner  
Mr. S.D.Ghayal, APP for Respondent-State  
Mr. M.V.Ghatge, Advocate for Respondent No.2

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**CORAM : MANGESH S. PATIL, J.  
DATE : 27.02.2019**

**ORAL JUDGMENT :-**

Heard. Rule. Rule is made returnable forthwith.  
The learned advocate for Respondent No.2 waives  
service. The learned APP waives service for Respondent

No.1. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner is facing charge for the offences punishable under Sections 325, 323, 504, 506 and the Regular Criminal Case No.158 of 2014 is in progress before the learned Judicial Magistrate First Class, Gangakhed. After examination of seven prosecution witnesses, the prosecutor under the signature of Respondent No.2, who is the original informant requested the Court to decide the earlier application filed for addition of a charge and also requested to issue a witness summons to the Medical Officer Dr. Phadnis who had treated the informant / Respondent No.2 in the Civil Hospital at Parbhani. The application was filed on 05.06.2018 and on the same day by following order it was allowed :

Perused appln. no say filed by the accused.  
Heard informant & Ld. APP. The accused & his Ld.  
Adv. are absent.

Considering the submission made in the appln. to decide the charge recorded against the accused it is necessary to issue written summons to

the medical officer as sought. As such, permission as prayed & granted in the interest of justice. Issue witness summons to the medical officer as rejected.

Sd/-  
5.6.2018  
JMFC

3. The learned advocate for Respondent No.2 submits that inspite of several calls neither the petitioner nor his learned advocate were present when the order was being passed and had turned up only thereafter and that is why their presence was recorded in the Roznama.

4. As is pointed out by the learned advocate for the petitioner, the observation in the order that the petitioner and his advocate were absent is perverse. The Roznama of that day clearly reads that both were present. One cannot comprehend any reason from the impugned order as to why without extending any opportunity to the petitioner even to file a say the application was decided on the very day. Whatever may be the reason, it is apparent that the impugned order has been passed without extending any opportunity to the petitioner to contest it. It is under these

circumstances, the impugned order suffers from illegality and impropriety. The petitioner being an accused should get every opportunity to contest the application. In my considered view, it would be apposite to relegate the parties before the Magistrate allowing the learned Magistrate to decide the application afresh by extending suitable opportunity to the petitioner to file his say.

5. The Writ Petition is allowed.
6. The impugned order is quashed and set aside.
7. The application (Exh.35) preferred by the prosecution in Regular Criminal Case No.158 of 2014 shall be decided afresh by extending opportunity to the petitioner to file his say and to make submissions.
8. The petitioner shall file his say in the Trial Court on the very next day fixed in the Trial Court and thereafter by extending an opportunity of being heard to him the learned Magistrate shall decide the application on its own merits uninfluenced by any observation

made herein above.

9. The rule is made absolute in above terms.

**(MANGESH S. PATIL, J.)**

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vmk/-