

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL APPLICATION NO.1208 OF 2021
IN APPEAL/467/2016

SHAM BALAJI SHINDE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. Salunke Sudarshan J.
APP for Respondents: Mr. S. J. Salgare
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**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.
DATED : 7th JULY, 2021**

PER COURT:-

1. We have heard learned counsel for the applicant and learned A.P.P. for the respondent-State.

2. This is an application filed in Criminal Appeal No. 467 of 2016 by the appellant-original accused No.2. Learned Additional Sessions Judge, Biloli has convicted the present applicant and two others for the offences punishable under Section 302 r.w. 34 of I.P.C., 201 r.w. 34 of I.P.C. and Section 364 r.w. 34 of I.P.C. The applicant herein alongwith the convicted accused assailed the said judgment and order of conviction before this Court by filing a common appeal bearing Criminal Appeal No. 467 of 2016. By order dated 25.8.2016 this Court has admitted the appeal and now the same is pending for final adjudication before this Court.

3. The applicant, who is original appellant No.2 in the aforesaid Criminal Appeal No. 467 of 2016, wants to engage a separate counsel i.e. Mr. Sudarshan Salunke and accordingly, the applicant has filed this application praying therein leave to file a separate appeal memo. Learned counsel submits that the applicant apprehends that he will not be defended properly in the common appeal preferred by them.

4. Learned counsel for the applicant has placed reliance on the judgment of this Court at the Principal Seat at Bombay in the case of ***Bhaskar Pandit Kadam and others vs. State of Maharashtra***, reported in **1984 (2) Bom.C.R. 769** wherein identical facts were involved. In the aforesaid case, the Division Bench of this Court has observed that if one of the appellant wants to engage different advocate in an appeal which has already been filed, an application for separating the appeal of the person must necessarily be made and separate appeal be registered by the office. Then there would be two appeals which can be supported by two advocates. In para 35 of the said judgment, the Division Bench of this Court has made the following observations:-

“35 We deem it necessary to make some observation for the guidance of the office of this court. In this appeal originally Mr. Dighe had filed his appearance for both the appellants. Some time later Mrs. Bhonsale after obtaining the consent of Mr. Dighe, filed her appearance only for appellant No.1. At the

time of final hearing naturally both the advocates thought it fit to address the Court on behalf of accused No.1. Such a procedure is really not permissible. Whenever there is one appeal irrespective of the number of the appellant, only one Advocate can appear in support of the appeal. Two Advocates cannot appear for two different appellants in the same appeal. However, if one of the appellants wants to engage a different Advocate in an appeal which has already been filed or admitted, an application for separating the appeal of that person must necessarily be made. Once that application a separate appeal be registered by the office. Then there would be two appeals which can be supported by two different advocates appearing. This is not the first time that such a procedural irregularity has been noticed by us. We, therefore, direct that whenever in an appeal where there are two or more appellants, subsequently an Advocate files appearance for only some of the appellants, that appearance should be taken on record unless the Advocate also make an application as indicated above for separating the appeal of those appellants of whom he intends to appear. When an Advocate thus files appearance for only some of the appellants in any one particular appeal, that appearance should be notified for objection and the course suggested above should be followed.”

5. In view of the observations made by this Court in the aforesaid case and for the reasons stated in the application, the application is allowed in terms of prayer clauses “B” and “C” and disposed of accordingly.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)