

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

924 CRIMINAL APPLICATION NO.968 OF 2022
IN APEAL/425/2018

VISHNU @ TUKYA HARIDAS DAKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr. A. S. Kale i/by M/s. Talekar
and Associates

APP for Respondent-State : Mr. S. D. Ghayal

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

Dated: April 06, 2022

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PER COURT :-

1. We have heard the learned counsel for the applicant and the learned APP for the respondent State.

2. The learned counsel for the applicant informs that copy of this application is served on the counsel representing the present applicant in criminal appeal no. 425 of 2018.

3. This application is filed in criminal appeal no.425 of 2018 by the appellant/original accused no.1 Vishnu @ Tukya Jaridas Dake. The learned Special Judge, Osmanabad has convicted the present applicant and
aaa/-

three others for the offence punishable under sections 376 (D), 354 (C), 324 r/w 34 of IPC and further convicted accused no.2 for the offence punishable under Section 377 of IPC. The applicant herein, alongwith other convicted accused persons, has assailed the said judgment and order of conviction before this Court by filing common appeal no.425 of 2018. By order dated 24.11.2018 this Court has admitted the appeal and now the appeal is pending for final adjudication before this Court.

4. The applicant, who is original appellant no.1 in the aforesaid criminal appeal no.425 of 2018, wants to engage a separate counsel through M/s. Talekar and Associates Litigating Law Firm and accordingly, the applicant has filed this application praying therein leave to file a separate appeal memo.

5. 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***

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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 to 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.”

6. In view of the observations made by this Court in the aforesaid case and for the reasons stated in the criminal application, the same is allowed in terms of prayer clause “A”. Criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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