

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

CRIMINAL WRIT PETITION NO.1551 OF 2022

**RAJA GAUD VITTHA GAUD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Petitioners : Mr. Bora Satyajit S.
APP for Respondent/State : Ms. V.S. Choudhari

...
CORAM : S.G. MEHARE, J.

DATED : 17th NOVEMBER, 2022

PER COURT:-

1. Issue notice to the State, returnable forthwith. Learned APP waives service of notice for the State.
2. Present petition is filed to set aside the order of no cross examination of PW-7 dated 13.10.2022.
3. Learned counsel for the petitioners would submit that on the date of hearing, the counsel appearing for the accused did not feel well; hence, he left the Court and appropriate applications were moved before the Court. The learned Additional Sessions Judge-1 turned down the request and passed an order of no cross of PW-7. In the daily status (roznama), it has been mentioned that the no cross order of PW-6 has been set aside and witnesses have been recalled. The next purpose of the business of the Court in the said daily status

reveal that the case was posted for statement under Section 313 of the Criminal Procedure Code.

4. Learned counsel for the petitioners would submit that there was no deliberate intention to avoid the cross-examination of PW-7. The interest of the litigant has been at stake. The matter was complicated. The case is likely to be closed in near future. In worst case, when the order of no cross of PW-6 has been set aside, the case would have been posted for cross-examination of PW-6. But the stage has been changed. The petitioners are unnecessarily suffering for the reasons beyond their control. The petitioners are ready to co-operate with the trial if a fair opportunity is granted to cross-examine PW-7 as well as PW-6.

5. Learned APP would submit that the conduct of the petitioners is not fair. Even on earlier date, the Court had considered the request of the learned counsel for the petitioners and specific directions were issued to cross-examine the witnesses, who were coming from far away without fail. Learned counsel Mr. M.R. Sharma appearing for the accused sought the adjournment on the same ground. Such is the tactics played by him only to harass the witness and protract the trial. Therefore, the impugned order of no cross of PW-7 is legal and correct. As far as the daily status report dated 13.10.2022 is concerned, when no cross order was set aside, the case ought to have been posted for the cross-examination of PW-6. She

would submit that the witnesses are coming from far away. They are public servants. Whenever they have been called repeatedly to the Court, the public work suffers heavily. The conduct of the parties contesting the case appears not genuine. The case is old more than five years; hence, it was to be disposed of at the earliest.

6. Perused the papers. It appears that as per the daily status report dated 13.10.2022, the no cross order of PW-6 has been set aside. When no cross order was set aside and the witnesses are absent, the case ought to have been posted for cross-examination of PW-6, but it is seen not done. As far as the no cross order of PW-7 is concerned, it appears that on previous date also, learned counsel Shri M.R. Sharma appearing for the accused sought an adjournment on his own health. His request was considered but the same thing repeated again. The law is well settled that the parties should not suffer for the mistakes of the lawyer. The trial appears to be concluded in near future. As far as the inconvenience of the witnesses is concerned, now the video conferencing facility is available to make the trial convenient. In the interest of justice, an opportunity needs to be granted to cross-examine the witnesses to make the justice. Only the cross-examination has been remained. Therefore, the accused may cross-examine both the witnesses, if they are residing out of Nanded on video conferencing. Hence, the following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) The order dated 13.10.2022 below Exhibit-171 declining the cross-examination of PW-7 is set aside.
- (iii) The learned Additional Sessions Judge-1 is directed to correct the daily status report of 13.10.2022 and allow the petitioners to cross-examine PW-6, if any.
- (iv) Learned counsel for the petitioners expressed the willingness to cross-examine the witnesses on video conferencing. The witnesses be called for cross-examination on video conferencing.
- (v) The lawyer appearing for the applicants should show his bonafide and co-operate with the trial. If he is not keeping well time and again, he should engage another lawyer to conduct the trial.
- (vi) If such things continues to happen, the accused/petitioners are also at liberty to engage another lawyer, if convenient to them.
- (vii) In view of the above, opportunity is granted to cross-examine PW-6 and PW-7 in the above terms.
- (viii) No order as to costs.

(S.G. MEHARE, J.)