

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 1356/2021

1. Vaijnath Gajanan Pund,
Aged about 31 years,
Occ. Agriculturist
2. Ganesh Ashok Pund
Aged about 30 years,
Occ. Agriculturist
3. Nagnath Ashok Pund,
Aged about 30 years,
Occ. Agriculturist,
All R/o Wadirayatal,
Tah. Risod, District Washim.

.... **APPLICANTS**

// VERSUS //

State of Maharashtra,
Through P. S. Risod, Washim.

.... **RESPONDENT**

Shri S.V. Sirpurkar, Advocate for applicants.
Shri H.D.Dubey, Additional Public Prosecutor for respondent/State.

CORAM : VINAY JOSHI, J.
DATED : 22.08.2022

JUDGMENT

1. Heard.
2. **Admit.** By consent of the learned counsel present for the parties, Criminal Application is taken up for final disposal.

3. The applicants are accused in Sessions Case No.06/2018, who applied to the Sessions Court seeking transfer of RCC No.135/2018 pending on the file of Magistrate stating it to be cross case/counter case. The learned Sessions Judge has rejected the application by holding that time and place of occurrence of both crimes are different and this being not cross case, it cannot be transferred as sought for.

4. At the instance of report dated 23.9.2017 lodged by one Vishal, a crime was registered for offences punishable under Sections 307, 323, 427, 504 read with Section 34 of the Indian Penal Code in which later Section 302 of the Indian Penal Code has been added. It is the case of the informant that on 22.9.2017 at 7.30 p.m. while he was at his house three accused namely Vajjnath, Ganesh and Nagnath came to his house and picked up quarrel. Particularly accused Ganesh was saying that as to why they had argument with his wife namely Vidya and at that instance, the incident occurred. Deadly assault was made on the father of the informant namely Bhagwanrao, who succumbed to the injuries. On the basis of said report, crime was registered vide CR No.267/2017 with the Police Station, Risod, District Washim.

5. Another Crime No.268/2017 was registered on the same day within twenty minutes at the instance of Vidya (wife of accused Ganesh) wherein she has alleged that on the same day around at 8.30 p.m. the informant Vishal entered in her house and outraged her modesty and, therefore, report.

6. Learned counsel appearing for the applicants would submit that though there is slight difference about time and place, however, both the incidents are closely connected with each other. The incident relating to deadly assault was a repercussion of another incident as it is evident from the FIR itself. It is pointed out that in the report lodged by Vishal, he himself specified that the cause of assault was the dispute with the wife of Ganesh namely Vidya. He has also attracted my attention to the order of this Court passed in Bail Application No.314 of 2018 (Ganesh Ashok Pund Vs. The State of Maharashtra) dated 3.5.2018, wherein while enlarging accused Ganesh on bail, this Court has considered both cases and expressed that there is reasonable connection between both the incidents.

7. In support of his contention, the applicants learned counsel has placed reliance on the decisions of the Supreme Court in the case of **Nathi Lal and others Vs. State of U.P and another : 1990 (Supp)**

Supreme Court Cases 145; State of M.P. Vs. Mishrilal (Dead) and others : (2003) 9 SCC 426 and Sudhir and others Vs. State of M.P. : (2001) 2 SCC 688, wherein it has been observed that it is proper to decide cross cases together by the same Court to avoid conflicting judgment over the same incident and bringing the entire incident before the Court.

8. The learned APP disputed the very aspect that both cases are cross case on the premise that there is time difference and place of occurrence is different. Reading of both reports, indicates that the wife of Ganesh has filed a police report stating that Vishal (informant of other case) has outraged her modesty and in succession another incident appears to have been taken place. FIR of Crime No.267/2017 bears reference of the earlier incident relating to incident stated by Vidya.

9. The law nowhere defines what can be termed as cross case or counter case. What has to be seen is that the reasonable nexus between two occurrences. The incident of deadly assault appears to be originated from the incident which was happened with Vidya. There may be slight time difference, however, there is possible and reasonable connection between both the occurrences. Having regard to the said fact and in view of law laid down in case of *Nathi Lal and others*

(supra) which was consistently followed, it is appropriate that both the cases shall be tried and disposed of by same Judge, as per guidelines laid down in the said case.

10. In view of the above, the application is allowed. The impugned order dated 06.08.2021 is hereby quashed and set aside.

11. The learned Magistrate is directed to commit RCC No.135/2018 to the Court of Sessions for trial by the same Judge where the Sessions Case No.06/2018 has been assigned.

12. Criminal Application stands disposed of in the above terms.

JUDGE

Ambulkar.

Signed By: MUKUND
LAXMANRAO AMBULKAR
Private Secretary

Signing Date: 24.08.2022 11:11