

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

CRIMINAL WRIT PETITION NO.318 OF 2023

SHYAMRAO KISHANRAO KHANDELOTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. S. S. Gangakhedkar
APP for Respondent No. 1: Mr. V. S. Badakh
Advocate for Respondent No. 2 : Ms. N. N. Gore

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 04, 2023

PER COURT :

1. This Petition takes exception to the order dated 01.01.2022 below Exh. 1 and order dated 06.02.2023 below Exh. 170 passed in R.C.C. no. 55/2014.

2. Petitioners are accused in R.C.C. No. 55/2014 filed at the instance of Respondent No. 2 for offence punishable under Sections 420, 463, 464, 471 read with Section 34 of the Indian Penal Code. Charge was framed against accused on 12.07.2019. It is case of Petitioners that during examination-in-chief copy of sale deed was shown to Respondent, which was exhibited at Exh. 88. The said exhibition of document was challenged in Criminal Writ Petition No. 1818/2019.

This Petition came to be disposed of on 21.01.2020. Petitioners though moved another application being O.M.C.A. no. 52/2021 before Principal District and Sessions Judge for transfer of proceeding to another Court. This application was rejected and against which another Petition being No. 1354/2021 was filed, which was disposed of on 17.02.2021. Applications moved for adjournment at Exh. 144 and 145 were rejected by trial Court. An application was also filed Exh. 142 for setting aside no cross order. On rejection of these applications, present Petition is filed.

3. Learned Counsel for the Petitioner submitted that accused since facing criminal trial they are entitled to defend themselves. According to him, considering the litigation between parties, it cannot be said that there was any intentional act on their part in not cross-examining complainant. He, therefore, seeks fair opportunity of defence.

4. Learned Counsel for contesting Respondent opposed the said contention by referring to the circumstances in which impugned orders were passed.

5. The right vested in accused to get fair opportunity to defend a criminal case cannot be disputed. In any case, such right cannot be refused solely on the ground that proceeding is pending since long or defence took time. Right of cross-examination is essence of defence of any accused. Refusal to grant opportunity to accused to cross-examine witnesses would lead to miscarriage of justice. No prejudice will cause to prosecution if opportunity is given to accused to cross-examine witnesses. At the same time, it must be ensured that the proceeding is concluded in reasonable time and accused are not allowed to prolong the same. Hence, Petitioners to complete cross-examination of all witnesses examined in R.C.C. no. 55/2014 by the prosecution within a period of one month from next date of hearing i.e., 25.09.2023

6. It is clarified that no further time shall be given to defence to cross-examine witnesses for any reason/excuse. In case, trial Court finds that Accused are delaying the proceeding, it is open for the Court to pass appropriate order in accordance with law, including order of closing of evidence of any

witnesses.

7. Petition is allowed in aforesaid terms.

(R.M. JOSHI, J.)

Malani