

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1510 OF 2023

BALASAHEB TUKARAM DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Petitioner : Mr. S. S. Shaikh h/f
Mr. N. S. Ghanekar

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CORAM : R.M. JOSHI, J
DATE : NOVEMBER 02, 2023

PER COURT :

1. This Petition takes exception to the order passed below Exh. 14 on 05.09.2023 in Special Case No. 69/2021 rejecting the request of the defence for examination of sanctioning authority first i.e., at the commencement of trial.

2. Learned Counsel for the Petitioner submits that the issue about the validity of sanction can be raised at any stage of the trial. Thus, according to him, it is just necessary that the sanctioning authority is examined first because if the sanction is found to be invalid, there is no propriety in proceeding further with the trial. To support his submissions, he placed reliance on the judgment of

Hon'ble Apex Court in case of Nanjappa Vs. State of Karnataka, MANU/SC/0788/2015.

3. There cannot be any dispute with regard to the proposition of law sought to be canvassed by the Counsel for the Petitioner about the issue of validity of sanction can be raised at any stage of the proceeding. The moot question before this Court is as to whether the accused/defence can insist upon examination of particular witness or it is a prerogative of the prosecution to examine witness and sequence thereof.

4. In Code of Criminal Procedure no specific provision is found with regard to examination of any particular witness and even sequence thereof. In a criminal trial, entire burden is on the prosecution to prove guilt of the accused beyond reasonable doubt and hence, it is decision of the prosecution to examine or not any particular witness. It is thus, the prerogative of the prosecution to examine such witnesses and also to decide the sequence thereof. In no circumstance, defence can be permitted to insist for examination of a

particular witness at a particular time. Though, Hon'ble Apex Court has held that the issue of sanction can be raised at any stage of trial and if sanction is held to be invalid, there is no propriety in proceeding with the trial. However, same cannot be considered to be a right vested in the defence to seek examination of any particular witness first. This, Court, therefore, finds that filing of present Petition is nothing but abuse of process of law.

5. In view of above, no case is made out even for issuance of notice. Petition stands dismissed.

(R. M. JOSHI, J.)

Malani