

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 522 OF 2023

APPLICANTS

- : 1. Eknath Dnyandeo Sabe, Aged 30 years, Occu. Labour (In Jail),
2. Sopan Dnyandeo Sabe, Aged 32 years, Occu. Labour (In Jail),
3. Dnyandeo Punjaji Sabe, Aged 67 years, Occu. Labour,
4. Nivrutti Dnyandeo Sabe, Aged 42 years, Occu. Labour, (In Jail),

All R/o. Makta, Tah. Khamgaon,
District Buldhana.

//VERSUS//

NON-APPLICANT

: The State of Maharashtra, Through
Police Station Officer, Police Station
Khamgaon Rural, Tq. Khamgaon,
Dist. Buldhana.

*(Complainant is dead and therefore is
not made party in the present
application)*

Mr. Ved R. Deshpande, Advocate for the Applicants.

Mr. A.R. Chutke, APP for the Non-applicant.

CORAM : G. A. SANAP, J.

DATED : 3rd MAY, 2023.

ORAL JUDGMENT

Heard.

02] **Admit.** The application is heard finally with the consent of the learned advocates for the parties.

03] In this criminal application, challenge is to the order dated 2nd March, 2023, passed by the learned Special Judge, Khamgaon, Dist. Buldhana, whereby the learned Special Judge was pleased to reject the application at Exh.283 made by the accused seeking permission to examine the author of the document at Exh.155. The sum and substance of the case of the accused is that the prosecution has examined PW-3. PW-3 has supported the case of the prosecution. It is stated that before examining PW-3, an attempt was made to serve him through the Police Head Constable Prakash Kisan Mate. Prakash Kisan Mate gave his report at Exh.155. It is stated that the proof of report of this summons is very relevant to substantiate the defence of the accused. It is further stated that mere giving exhibit number to the document may not be sufficient to prove the contents of the document. It is stated that, therefore, the defence deserves an opportunity to call Police Head Constable Prakash Kisan Mate as a defence witness and to

seek the explanation about his endorsement on the summons.

04] This application was opposed. The main ground put forth in the reply is that this application was made at a belated stage. The matter was adjourned for final argument. It is stated that the summons with the report of the Police Head Constable has been marked as Exh.155 and the same can be read in evidence.

05] The learned Special Judge, Khamgaon, after hearing the parties, agreed with the submissions advanced by the prosecution and rejected the application.

06] I have heard Mr. Ved R. Deshpande, learned advocate for the applicant/accused and Mr. A.R. Chutke, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

07] It is to be noted that the summons and the report on the said summons has been admitted in evidence as Exh.155. The report pertains to the statement made by PW-3, when the summons was sought to be served to him. According to the defence, this endorsement is required to be proved by confronting the witness with the said endorsement. It is seen that PW-3, in his

evidence, has supported the case of the prosecution. In the said report at Exh.155, certain statements have been attributed to PW-3. PW-3, in his evidence, has categorically denied the statements sought to be attributed to him from the said service report. In my view, the purpose of the accused would be served by relying upon the exhibited document and the report. It is seen that despite this, the accused has been insisting for calling the said Police Head Constable as a witness. It is to be noted that the right of fair trial is the hallmark of the criminal justice system. The prosecution as well as the accused deserve a fair trial. The opportunity to take care of each and every relevant aspect flows from the right of fair trial. In this case, though the exercise undertaken seems to be harmful in all respect to the accused, he seems to be hellbent to examine the said witness. In my view, the grant of an opportunity to the accused, as sought for, at this stage, can put an end to his grievance once and for all. This can avoid any technical objection in future. The opportunity cannot be denied only on the ground that the report has been admitted in evidence as Exh. 155. Therefore, his application deserves consideration.

08] Accordingly, the application is **allowed**.

The order dated 2nd March, 2023, passed by the learned Special Judge, Khamgaon, Dist. Buldhana is set aside. The application at Exh.283 is allowed. Accused is granted permission to examine the Police Head Constable Prakash Kishan Mate, Buckle No.309, Police Station Khamgaon (Rural) as a defence witness for this limited purpose.

09] The application is disposed of accordingly.

(G. A. SANAP, J.)

Vijay