



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1179 OF 2023

Rajaram Bansi Darkunde

Age:- 49 years, Occ. Agri.,

R/o Pargaon, Tq. & Dist. Ahmednagar.

... PETITIONER

V/s.

1. The State of Maharashtra,
Through Police Inspector,
Taluka Police Station, Ahmednagar.
2. Dilip Baburao Darkunde
Age- 56 years, Occ. Agri
3. Baban Baburao Darkunde
Age- 62 years, Occ. Agri
4. Machindra Baburao Darkunde
Age- 59 years, Occ. Agri
5. Goraksha Baburao Darkunde
Age- 51 years, Occ. Agri
6. Somnath Machindra Darkunde
Age- 37 years, Occ. Agri
7. Mithu Ajinath Darkunde
Age- 31 years, Occ. Agri
8. Navnath Namdeo Darkunde
Age- 37 years, Occ. Agri
9. Kiran Baban Darkunde
Age- 28 years, Occ. Agri

All 2 to 9 R/o Pargaon Bhatodi,
Tq. Nagar, Dist. Ahmednagar.

... RESPONDENTS

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Ms. Kale Pratiksha Chhaburao, Advocate for the Petitioner
Mr. S.B. Narwade, APP for the Respondent-State
Mr. Munot Vijay B., Advocate for the Respondent Nos.2 to 9
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 22.11.2024

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. The learned APP waives notice for the Respondent-State. Heard finally with consent of both the sides.
2. Heard Ms. Pratiksha Kale the learned counsel appearing for the Petitioner/Informant injured, Mr. S.B Narwade the learned APP for the Respondent No.1-State and advocate Mr. Munot the learned counsel appearing for the Respondent Nos.2 to 9.
3. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is not in dispute that the Respondent/Accused are charge sheeted for the offence punishable under Section 323, 324, 504, 506, 143, 147, 148, 149 of the I.P.C. in Crime No.192/2013 registered with Ahmednagar Taluka Police Station and after filing of charge-sheet it is registered as RCC No.417/2014. The trial is pending on the file of the learned Additional C.J.M., Court No.16, Ahmednagar. In order to bring the charge Exh.5 the prosecution examined witnesses including the Medical Officer/PW7- Dr. Dinesh Patole at Exh.65 who has examined the

injured Dnyandev Darkunde and found injury on his 5th finger of the left hand. The PW7 carried out surgery and removed tip of the finger which was blackened. The PW8- Dr. Nuzahat Ayesha deposed at Eh.69 that on 09.10.2013 at about 12.30 a.m. she examined the injured Dnyandev Darkunde and found injuries 1) little finger of left hand fracture, with slightly cut and was hanged with other injuries. The medical certificate Exh.70 was proved by the PW8 which shows that injury no.1 is of grievous nature. After evidence of the prosecution witnesses was over the original complainant's advocate submitted an application Exh.74 with consent of the public prosecutor and prayed for framing of additional charge under Section 326 of the I.P.C. On 15.02.2023, the learned JMFC passed an order and allowed said application and added charge under Section 326 of the I.P.C. at charge Exh.15. Being aggrieved by the said order the Respondent No.2 to 9/accused persons have filed Criminal Revision Petition No.46/2023 and challenged addition of charge. On 10.07.2023, the learned Sessions Court passed the impugned order and set aside the order dated 15.02.2023 passed below Exh.74 in RCC No.417.

4. The grievance of the present Petitioner/ injured/ informant is that no notice was served upon him by the learned Sessions Court and in his absence and without providing an opportunity of hearing, the impugned order has been passed which is violative of principles of natural justice and in breach of right of the informant.

5. The learned counsel appearing for the Respondent Nos. 2 to 9 canvassed in vehemence that the learned Sessions Court observed that the informant/injured was duly served with the notice but he remained absent, hence the matter has been proceeded ex parte, therefore, no right is created in favour of the Petitioner to hear the matter again on merits as he was intentionally and deliberately absent. Needless to say that though the learned Sessions Court passed the impugned order and observed that the Respondent No.2 was absent though he was served with the notice, however, no service report has been referred in the judgment. Therefore, it is obvious that the revision has been proceeded in absence of the present Petitioner/injured ex parte. Since the Petitioner who is aggrieved person wanted to resist the revision on the ground of framing of charge, therefore, to give a fair and proper opportunity of hearing, it would be just and proper to remand the matter by quashing and setting aside the impugned judgment.

6. In view of the above discussion, the present petition is allowed. The impugned judgment and order dated 10.07.2023 is hereby quashed and set aside. The Criminal Revision Petition No.46/2023 is remanded back for fresh hearing by giving an opportunity of hearing to the present Petitioner/original injured-informant. The learned Sessions Judge is hereby requested to decide the said revision as early as possible within a period of six months from the

receipt of Writ of this Court. The parties to the revision shall not opt for adjournments unless bona fide and substantial reasons are set out.

7. The rule is made absolute in above terms.

[Y.G. KHOBRADE, J.]