



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

CRIMINAL APPLICATION (APL) NO. 321 OF 2024

1. Haribhau S/o. Rajaram Telgote,
Aged about 63 years, Occ. Labour
2. Shyam @ Kundan S/o. Haribhau Telgote,
Aged about 32 years, Occ. Labour

Both R/o. Rahul Nagar, Akot,
Tah. Akot, Dist. Akola.

. . . APPLICANTS

// VERSUS //

State of Maharashtra through
Police Station Officer,
Police Station Hiwarkhed,
Tah. Telhara, Dist. Akola.

. . . NON-APPLICANT

Shri N. R. Tekade, Advocate for applicant.
Shri A. M. Kadukar, APP for non-applicant/State.

CORAM :- M. W. CHANDWANI, J.

DATED :- 28.02.2024

ORAL JUDGMENT :-

Heard.

2. On oral motion of the learned counsel for the applicants,
permission is granted to amend the prayer clause. The amendment to
be carried out forthwith.

3. **Admit.** Heard finally by consent of the learned counsel for the parties.

4. The application challenges the order dated 03.02.2024, below Exh.258, and order dated 21.02.2024, below Exh.267, passed by the learned Additional Sessions Judge, Akot in Sessions Trial No. 57/2015, thereby rejecting the application of the applicants to set aside the order of closing the defence evidence and to permit the applicants to examine defence witness- Mangesh Haribhau Telgote.

5. The learned APP for the State supported the impugned orders of the Trial Court and prayed for rejection of the application.

6. It is not necessary to go into the factual matrix of the case in detail. Suffice to say that the applicants, who are accused nos. 1 and 3 in the said Sessions Trial wanted to examine Dr. Sujata Chauhan and one Mangesh Haribhau Telgote. They examined Dr. Sujata Chauhan and on that day other witness- Mangesh Telgote was also present in the Court. However, after conclusion of the evidence of Dr. Sujata Chauhan, for one or another reason witness- Mangesh Telgote could not be examined on that day. On the next date, an application for recalling witness- Dr. Sujata Chauhan was made by the applicants. The said application came to be rejected on 03.02.2024. Since, the

applicants wanted to examine remaining witness- Mangesh Telgote therefore, on the same day they filed an adjournment application due to difficulty of leading counsel Shri Joshi, though the witness- Mangesh Telgote was present. The learned ASJ granted adjournment but, simultaneously closed the evidence of the defence. Thereafter, the applicants filed an application vide Exh.267 for setting aside the order of closing the evidence of the defence side. By the impugned order, the said application came to be rejected mainly on the ground that it would be amounting to reviewing of its own order. Feeling aggrieved with the said order, the present application came to be filed.

7. The applicants being tried for a serious offence of murder, which prescribed capital punishment or at least the punishment of life imprisonment. In the said case, the applicants wanted to examine defence witness. One of the witness Dr. Sujata Chauhan is already been examined. Thereafter, the application for recalling of Dr. Sujata Chauhan was heard and disposed of on 03.02.2024 and on the same day, the evidence of the defence witness was closed. It is a matter of record that defence witness- Mangesh Telgote was present. Just because of difficulty of the leading counsel, he could not be examined, the valuable right of the applicants, to examine witness in their defence, in a serious offence like in the present case, cannot be taken away. Without going into details and to give chance to the applicants

to examine the witness in their defence, the impugned orders deserve to be quashed and set aside. Hence, I proceed to pass the following order:-

- i) The application is allowed.
- ii) The impugned orders dated 03.02.2024, below Exh.258 and order dated 21.02.2024, below Exh.267, passed by the learned Additional Sessions Judge, Akot in Sessions Trial No. 57/2015 are hereby quashed and set aside.
- iii) The application (Exh.267) filed by the applicants is allowed. The applicants are permitted to examine witness- Mangesh Haribhau Telgote on the next date of hearing before the Trial Court.
- iv) The applicants shall not seek further adjournment, without any reasonable cause, before the Trial Court for examination of the said witness.

(M. W. CHANDWANI, J.)