
(2014) 02 BOM CK 0322

In the Bombay High Court

Case No : Criminal Writ Petition No. 158 of 2014

Dattu Uttam Punde and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 231, 231(2)

Citation : (2015) 1 BomCR(Cri) 742

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : S.J. Salunke, Advocates for the Appellant; P.N. Muley, A.P.P, Advocates for the Respondent

Judgement

A.M. Thipsay, J.—Heard Mr. S.J. Salunke, the learned Counsel for the petitioners. Heard Mr. P.N. Muley, the learned Additional Public Prosecutor for respondent. Rule. By consent, Rule made returnable forthwith. The learned Additional Public Prosecutor waives service on behalf of respondent. By consent, heard finally forthwith.

2. The petitioners are the accused in Sessions Case No. 174/2012 pending before the Assistant Sessions Judge at Beed. The trial of the said case is in progress. Witness summonses have been issued and served upon a number of witnesses. In the course of trial, the first informant Gangadhar (PW-3) was examined as a witness. After his examination-in-chief was over, the accused persons made an application (Exhibit 73) and prayed that the cross-examination of the said witness be deferred till the evidence of the other witnesses would be completed. Accused stated in the said application that, otherwise they were likely to be prejudiced in their defence and the purpose of cross-examination was likely to be defeated, unless their prayer was granted.

3. The learned Assistant Sessions Judge rejected the said application by the following order :

"Read the application and say on A.P.P. Heard both sides.

Perused the section 231(2) of Cr.P.C.

After considering the nature of offence, contents of this application as well as witnessed summons service report on record, it appears to me that this application is fit to be rejected therefore, I hold that, the application filed by the accused is fit to be rejected. Hence, this application is rejected."

4. It is apparent that no reason whatsoever for rejecting the application was given by the learned Assistant Sessions Judge. The order makes a curious reading and it shows that since it appeared to the learned Assistant Sessions Judge that the application was fit to be rejected, therefore, he was rejecting the application. This does not show any reasoning behind the rejection of the said application.

5. Undoubtedly, the learned Assistant Sessions Judge had a discretion in the matter. The discretion, however, is to be exercised judicially. The impugned order does not show, what has weighed the learned Assistant Sessions Judge in rejecting the application. The learned Assistant Sessions Judge does not seem to have applied his mind as to why the Sub-section (2) of section 231 has been enacted, why discretion has been conferred thereby on the Judge. He ought to have, then, further considered whether the present one was a fit case to exercise the discretion vested in him, by the said provision.

6. In my opinion, it would be proper to direct the learned Assistant Sessions Judge to reconsider the application, after giving a further opportunity to the accused and to the prosecution of being heard in the matter and then pass an appropriate order indicating brief reasons for his decision. Recording of such brief reasons would be necessary for the purpose of ensuring that the decision has been arrived at after taking into consideration all the relevant aspects of the matter.

7. The petition is partly allowed.

The impugned order is set aside.

The learned trial Judge shall consider the application (Exhibit 73) afresh, after giving an opportunity to the accused as well as to the prosecution of being heard and then decide the same by recording at least brief reasons for the decision.

8. The petition is disposed of in the aforesaid terms. Rule made absolute accordingly.