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**BEFORE THE SPECIAL COURT (SC & ST PREVENTION OF
ATROCITIES ACT), MALKAPUR, DISTRICT- BULDHANA**

Atro. Special Case No.6/2018

ORDER BELOW EXHIBIT – 30

MHBU110005822018 **State of Maharashtra**

... Prosecution



Versus

Rajendra @ Raju Uttamsingh

Umalkar & anr.

... Accused

This application is filed on behalf of the accused seeking to call counter case bearing S.C.C. no.1098/2018 pending before the Ld. Judicial Magistrate First Class (Court no.2), Malkapur.

2. Accused no.1 states that out of the same incident which took place on 06/08/2018 at around 8:30 a.m. at village Tighra, two reports counter to each other were registered by M.I.D.C. Police Station, Malkapur on 06/08/2018 itself. The report registered against present accused in the present case resulted into filing of charge sheet before the special court as the offences alleged are punishable under the S.C. & S.T. (Prevention of Atrocities) Act, 1989, whereas present accused no.1 filed first information with the same police station against the opposite party viz. the informant in the present case and charge sheet has been filed in that case which is pending before the Ld. Judicial Magistrate First Class (Court no.2), Malkapur as S.C.C. no.1098/2018.

3. Ld. advocate for the accused no.1 relied upon the decision of Hon'ble Bombay High Court in ***Mukinda Rama Kamble V/s. State of Maharashtra reported in 2007(1) Mh.LJ (Cri.) 344*** in which it is held that the counter cases are arising out of the same incident have to be tried together. If two persons have lodged reports in respect of the same incident, it is necessary to ensure that both the criminal cases are tried by the same learned Judge, to ensure that conflicting decisions are not rendered in respect of the same incident. In a situation where one of the criminal cases involves an offence exclusively triable by the Court of Sessions, whereas, the other pertains to the offence triable by the Magistrate, the Magistrate is obliged to commit the counter case to the Court of Sessions for being tried along with the Sessions case arising out of the same incident by restoring to the provisions of Section 323 of the Criminal Procedure Code, 1973. If due to inadvertence the counter case is not committed for trial by the concerned Magistrate, the power calling for the said case can be exercised by the Court of Sessions.

4. Reference of the decision of Hon'ble Supreme Court in ***Nathi Lal V/s. State of U.P 1990 SCC (Cri) 638*** has been made whereas the Hon'ble Supreme Court has enunciated the principle that both the counter cases should be tried by the same Judge one after the other and judgments in both the criminal cases should be pronounce on the same day.

5. Having considered this position and after giving opportunity to both the sides to make submissions in this behalf, I

have ascertained that present case as well as S.C.C. no.1098/2018 which is pending before the Ld. Judicial Magistrate First Class (Court no.2), Malkapur arose out of the same incident and those are counter cases filed by the parties against each other. Having so, it would be just to direct the Ld. Judicial Magistrate First Class (Court no.2), Malkapur to adopt the provisions of Section 323 of the Criminal Procedure Code, 1973 and to commit the case bearing SCC no.1098/2018 to this court immediately for trial by this Special Court. Hence, the following order,

ORDER

Ld. Judicial Magistrate First Class (Court no.2), Malkapur is directed to adopt the provisions of Section 323 of the Criminal Procedure Code, 1973 do commit S.C.C. no.1098/2018 to this Court for trial along with Special Case bearing no.6/2018 (State V/s. Rajendra Umalkar & anr.).

Date : 09/01/2023

(S.V.Jadhav)
Special Judge, Malkapur.

CERTIFICATE

I affirm that the contents of this <u>P.D.F.</u> file order is same, word to word, as per the original order.	
Name of the Stenographer	Balkrishna M. Shilwant.
Court	Ad-hoc District Judge-1 & Additional Sessions Judge, Malkapur.
Date	09/01/2023
Order signed by the presiding officer on	09/01/2023
Order uploaded on	09/01/2023