

CNR NO. MHGA090001392018
S.C.C. No. 62/2018
State-Vs- Vivek +1
Order below Exh. 01



IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, CHAMORSHI
(Presided Over by Diksha D. Vighne)

Summary Criminal Case No.62/2018

State of Maharashtra
Through Food Safety Inspector,
Gadchiroli
Tah. & Dist. Gadchiroli.

----- **Prosecution**

-Versus-

Vivek Gangadhar Ainchwar+1

----- **Accused**

Order Below Exh.16
(Passed on 06/04/2023)

By this application, the accused No.1 Vivek Gangadhar Ainchwar is seeking separation of his trial from accused No.2 Smt. Kunda Dhananjay Tawade resident of Teacher colony, Sangadi, Tah. Sakoli, Dist. -Bhandara.

2] Perused the application and record of the case. Heard, Shri S.C. Gaurkar for the accused No. 1 and Spl.APP for the State.

3] It is stated in the application and submitted by learned advocate for accused no. 1 that this case is filed for the offence punishable under section 3(1)(zz)(vii) and (viii) r/w. Section 26(2)(i), 26(1) 59 of Food Safety and Standards Act-2006 and rules of 2011. Accused no.1 is appearing before this court since 2018 but accused no.2 does not appear before court till today. The prosecution does not take any efforts for securing presence of accused no.2. Due to this accused no.1 is suffering mentally and physically. Learned advocate

for accused no. 1 has brought to notice the report of police station, Ashti in which it is stated that they were unable to execute arrest warrant against accused because accused is resident of other State. But, it is seen from the case record that accused no.2 is resident of Teacher colony, Sangadi, Tah. Sakoli, Dist. -Bhandara. It is submitted by learned advocate of accused no.1 that from this report it is clear that prosecution is not willing to secure presence of accused no.2. But, his client accused no.1 is continuously present before this court without any progress in the case. Therefore, in the interest of justice he has prayed for separation of trial of accused no.1 from accused no.2.

4] The learned A.P.P for State has filed his say and opposed the said present application. It is stated by him that N.B.W. has already issued by court but it was not duly served therefore the presence of accused was not secured. Therefore, it is necessary to re-issue N.B.W. the accused no.2 to secure the presence of accused no. 2. Hence, he has submitted that the present application is not tenable without sufficient cause hence he has prayed for rejection of this application.

5] Perused application and say thereon. It is seen that the case was filed on 22-02-2018 for the offence punishable under section 3(1)(zz)(vii) and (viii) r/w. Section 26(2)(i), 26(1) 59 of Food Safety and Standards Act-2006 and rules of 2011 against accused no.1 and 2. It is seen from the roznama that accused no.1 is attending court on most of the dates. On the other hand, accused no.2 has never appeared before this court despite of several times summons, warrants were issued against her. But, in this case till today the proclamation has not issued against accused no.2. Separation of trial in this case means nothing but recording of evidence in the absence of absconded accused no.2.

Therefore, all methods provided under Cr.P.C. shall be exhausted for securing presence of accused no.2. Before adopting all methods the evidence cannot be recorded in the absence of absconded accused no.2. Thus, I find that it is just and proper to issue proclamation against accused no.2. Till receiving report of proclamation this application can be keep pending for order. Thus, considering aforesaid reasons I pass following order.

Order

- 1] Issue proclamation against accused no.2 under section 82 of Cr.P.C.
- 2] Keep this application pending for order till receiving of report of proclamation against accused no.2.

Date:- 06-04-2023
Place : Chamorshi

(Diksha D. Vighne)
Judicial Magistrate F.C.
Chamorshi.