

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

CRIMINAL WRIT PETITION NO. 1 OF 2015

Kerba s/o Dattatraya Parad,
age 33 years, occ. Agril.,
R/o Sonnathadi, Tq. Majalgaon,
District Beed

...Petitioner

VERSUS

The State of Maharashtra

...Respondent

.....
Shri S.J.Salunke, advocate for petitioner
Shri V.H.Dighe, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 28th January, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties heard finally.

2] The challenge in the present Writ Petition is to the judgment and order, passed by the learned Additional Sessions Judge, Majalgaon in Criminal Revision Application No. 24 of 2013, dated 7.11.2014, by which the learned Revisional Court allowed the Revision filed on behalf of the respondent/State and

thereby set aside the order, passed by the learned Judicial Magistrate, First Class, Majalgaon, below Exh.73 in Regular Criminal Case No. 238 of 2007, by which the learned Magistrate was pleased to reject the application filed on behalf of the State under Section 311 of the Code of Criminal Procedure.

3] I have heard Shri S.J.Salunke, learned counsel for the petitioner and Shri V.H.Dighe, learned Additional Public Prosecutor for the respondent/State.

4] The main bone of contention of the learned counsel for the petitioner is that the Revision filed by the present respondent/State before the learned Revisional Court itself was barred in view of Section 397 (2) of the Criminal Procedure Code, being the order questioned before the Revisional Court was an interlocutory in nature.

5] In order to buttress his point, learned counsel for the petitioner has relied upon an authoritative pronouncement of the Hon'ble Apex Court in the case of **Sethuraman vs Rajamanickam**, reported in **(2009) 5 SCC 153**.

6] The present petition needs to be allowed in view of the dictum of the Hon'ble Apex Court in the case cited supra,

which clearly ruled that the order passed by the Court under Section 311 of the Code of Criminal Procedure is an interlocutory order, and therefore, the Revision is barred in view of Sub-Section (2) of Section 397 of the Criminal Procedure Code.

7] In that view of the matter, present Criminal Writ Petition is allowed. The judgment and order, passed by the learned Additional Sessions Judge, Majalgaon, dated 7.11.2014 in Criminal Revision Application No. 24 of 2013 is hereby quashed and set aside. Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]

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