

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

CRIMINAL WRIT PETITION NO. 10 OF 2015

Jivaraj S/o Maroti Dhakane

Age : 55 Yrs., Occ. : Agril.,

R/o : Village Asawalambe,

Taluka : Parali Vaijnath,

Dist. : Beed.

..... PETITIONER/

[ORI. REVISION APPLICANT]

V E R S U S

The State of Maharashtra

Through the Police Inspector,

Ambejogai (Rural) Police

Station, Taluka Ambejogai,

District : Beed.

..... RESPONDENT

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Mr. Rajendra S. Deshmukh, Advocate for the
Petitioner.

Mr. D.R.Kale, A.P.P. for the Respondent - State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 7th JANUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner and the learned A.P.P. for the State, Writ Petition is taken up for its final hearing.

2. Heard Mr. Rajendra S.Deshmukh, learned counsel for the petitioner and Mr. D.R.Kale, learned A.P.P. for respondent - State.

3. Looking to the question involved in the present Writ Petition, filing of submissions on behalf of the State is not necessary. In fact, learned A.P.P. has fairly submitted that the present Writ Petition can be decided at this stage only.

4. It is submitted on behalf of the petitioner that the present petitioner is a first informant. On the basis of the first information lodged by him, an offence was registered with police station Ambejogai (Rural), district Beed vide Crime No. 19/2013 for the offences punishable u/ss 420, 467, 468, 471, 472, 406 read with section 34 of the Indian

Penal Code against 42 persons. It is contended that after completion of the investigation, the Investigating Officer filed charge sheet in the Court of the Judicial Magistrate First Class. Since the offences were triable by the learned Magistrate, the trial commenced. It is further pointed out that after completion of the entire trial and after recording of the statement of the accused person u/s 313 of the Code of Criminal Procedure, the learned Magistrate *suo motu* exercised his powers u/s 319 of the Code of Criminal Procedure and issued process against the present petitioner/first informant on 21/10/2014.

5. Feeling aggrieved by such order, the present petitioner invoked the revisional power of the learned Sessions Judge by approaching to the said Court. The Revision filed on behalf of the present petitioner is registered as Misc. Criminal Revision No. 63 of 2014. In the said Revision, the petitioner/original first informant specifically questioned the legality and correctness of the order dated 21/10/2014 passed by the learned J.M.F.C., Ambejogai in R.C.C. No. 158/2013. The learned counsel submitted that along with memo of Revision, an application for stay was also

filed. The said application is at Exh. 5. The learned revisional Court on 12/11/2014 was pleased to reject the application for interim stay (Exh.5). Feeling aggrieved by the said order, the petitioner is before this Court.

6. Worth to note is that the Misc. Criminal Revision No. 63 of 2014 filed on behalf of the petitioner questioning the correctness and legality of the order of the learned Magistrate invoking his power u/s 319 of the Code of Criminal Procedure and issuance of process consequent thereto against the present petitioner is pending before the revisional Court. The revisional Court has not decided the Revision filed on behalf of the present petitioner. Thus, the order passed by the learned Magistrate has not reached its finality and its correctness is under the scrutiny of the revisional Court.

7. In view of the pendency of the Criminal Revision, it was open for the learned revisional Court, instead of rejecting the application for stay (Exh.5), to decide the Criminal Revision on its own merits. It would have been in the fitness of things since the petitioner has raised question

about the correctness of the order impugned before the revisional Court.

8. It is submitted by the learned counsel for the petitioner before this Court, since the application for stay is rejected by the learned revisional Court, the learned Magistrate has fixed the proceedings on 09/01/2015 and has also issued a Non Baillable Warrant against the present petitioner.

9. After hearing the learned counsel for the petitioner and the learned A.P.P. for the State, this Court is of the view that the learned revisional Court ought to have decided the Revision and ought to have taken the order of the learned Magistrate to its logical end. Since the Revision is pending, it will cause serious prejudice to the petitioner if the order passed by the learned Magistrate is not stayed.

10. In that view of the matter, the present Writ Petition needs to be allowed and accordingly it is allowed with following directions :

- (i) The Order passed by the learned Additional Sessions Judge, Ambejogai dated 12/11/2014 below Exh. 5 in Misc. Criminal Revision No. 63 of 2014 is hereby set aside.
- (ii) The learned Additional Sessions Judge, Ambejogai, on whose file Misc. Criminal Revision No. 63 of 2014 is pending, is hereby directed to decide the said Revision in accordance with law.
- (iii) Till the Misc. Criminal Revision No. 63 of 2014 is decided by the learned Additional Sessions Judge, Ambejogai, there shall be stay to the order passed by the learned J.M.F.C., Ambejogai dated 22/10/2014 below Exh. 1 in R.C.C. No. 158/2013.
- (iv) The Non Baillable Warrant, though it is issued against the present petitioner and is not executed as on today, shall not be executed.
- (v) The petitioner shall co-operate to the learned revisional Court to decide the Revision as expeditiously as possible and the learned revisional Court shall decide the same within a period of one month from today.

(vi) Till Misc. Criminal Revision No. 63 of 2014 is decided by the learned revisional Court, R.C.C. No. 158/2013 pending on the file of the J.M.F.C., Ambejogai shall be stayed *qua* the present petitioner only.

11. Rule is made absolute. The parties to act upon the authenticated copy of this Judgment.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 10.2015 - [J]

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