

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

CRIMINAL WRIT PETITION NO. 142 OF 2015

Dnyaneshwar Narayan Wankhede,
age 50 years, occ. Agriculture,
R/o Chinchapure, Tq. Pachora,
District Jalgaon

...Petitioner

VERSUS

State of Maharashtra,
through Police Station Officer,
Zilla Peth Police Station, Jalgaon

...Respondent

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

CORAM : V.M.DESHPANDE, J.

DATED : 24th February, 2015

ORAL JUDGMENT : -

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

2] Heard Shri S.S.Bora, learned counsel for the petitioner and Shri V.H.Dighe, learned Additional Public Prosecutor for respondent/State.

3] The present petitioner is first informant. On the basis of the report lodged by him, an offence was registered against Kiran Pitamber Patil for the offences punishable under Sections 384, 385, 387, 389 of the Indian Penal Code.

4] The first informant/present petitioner filed application under Section 457 of the Code of Criminal Procedure in Regular Criminal Case No. 381 of 2014 for return of seized goods, namely cash amount of Rs.13,40,000/- and gold Braslate worth Rs.1,00,000/-. The said application is at Exh.4 on the record of Regular Criminal Case No. 381 of 2014. The learned Magistrate on 3.9.2014 rejected the said application.

5] Feeling aggrieved thereby, the present petitioner preferred a Revision before the learned Sessions Judge, Jalgaon. The said Revision is registered as Criminal Revision Application No. 199 of 2014. The said Revision is still pending. During the pendency of the said Revision, the learned Sessions Judge passed an order on 19.12.2014 directing the present petitioner, who is Revision applicant before the Sessions Court to join accused as party to the Revision. The said order is assailed before this court.

6] Firstly, the accused has no right of hearing at the time of decision of the application under Section 457 of the Code of

Criminal Procedure, especially when the accused is not claiming the ownership of muddemal property. It appears that the accused has filed his say in the proceeding under Section 457 of the Criminal Procedure Code before the learned Magistrate through his advocate on 28.5.2014. The said reply is available at page 22 of the compilation of the present Writ Petition. Perusal of the said reply would reveal that the accused has not claimed the ownership in respect of the articles/property claimed by the first informant by moving application under Section 457 of the Criminal Procedure Code. In that view of the matter, the learned Sessions Judge ought to have seen that the Revision can proceed further even in absence of the accused. Hence, the order, dated 19.12.2014 cannot stand to the scrutiny of law.

7] In the result, Criminal Writ Petition is allowed. The order, dated 19.12.2014 passed by the learned Sessions Judge, Jalgaon in Revision Application No. 199 of 2014 is hereby quashed and set aside. The learned Revisional Court is directed to proceed with the Revision and decide the same on its own merits. Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]