

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

**CRIMINAL APPLICATION NO. 1023 OF 2015
IN WP/812/2012**

MOHD. SAMI UDDIN S/O MOHD. YUSUF CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA & ORS

...
Advocate for Applicant : Mr. Chaudhari Md.
Mujeebuddin Ms.
APP for Respondent/State : Mr. A.V. Deshmukh

...
CORAM : S.S. SHINDE & A. I. S. CHEEMA, JJ.
Dated: July 24, 2015

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PER COURT :-

This application has been filed for recalling of the order dated 18.12.2012 passed by the Division Bench of this Court in Criminal Writ Petition No. 812/2012 and also initiating legal proceedings against Respondent No.14 for adducing false evidence by way of filing false affidavit in reply dated 1st October, 2012 in Criminal Writ Petition No. 812/2012. The other prayers in the Application are consequential in nature.

2. We have heard the learned counsel appearing for the applicant and the learned Additional Public Prosecutor for the Respondent/State.

3. The learned counsel appearing for the applicant, in support of the contention that, the order dated 18th December, 2012 passed by Division Bench of this Court in Criminal Writ Petition No. 812/2012 can be recalled and bar under Section 362 of Criminal Procedure Code cannot be an impediment for recalling said order, pressed into service expositions of the Supreme Court in the case of (i) **Asit Kukar Kar V/s State of West Bengal**¹, (ii) **R. Rajeshwari V/s H.N. Jagadish**², (iii) **Hamza Haji V/s State of Kerala and anr.**³, (iv) **Bindeshwari Prasad Singh V/s Kali Singh**⁴, (v) **Pramatha Nath Talukdar V/s Saroj Ranjan Sarkar**⁵ and unreported judgment of the Supreme Court in the case of **Vishnu Agarwal V/s State of U.P. & anr.**

1 2009 (2) SCC 703

2 (2008) 4 SCC 82

3 (2006) 7 SCC 416

4 AIR 1977 SC 2432

5 AIR 1962 SC 876(1)

decided on 23.02.2011 in Criminal Appeal No. 1323 of 2004 and Criminal Appeal No. 875 of 2006. He invited our attention to the relevant observations in the aforementioned judgments, which takes a view that, the prayer for recalling of order and review are two different reliefs. He further invited our attention to the observations in the aforementioned judgments, wherein the Supreme Court has observed that, in rare cases, the High Court can exercise inherent powers under section 482 of Criminal Procedure Code and recall the order. It is submitted that, since the affidavit filed by Respondent No.14 was with incorrect averments and misleading, the Division Bench of this Court proceeded to pass an order relying upon the averments made in the said affidavit. It is the contention of the learned counsel appearing for the applicant that, the respondents have played fraud on the Court, and therefore, by exercising powers under Section 482 of the Criminal Procedure Code, the order dated 18.12.2012 passed by the Division Bench of this Court

in Criminal Writ Petition No. 812/2012 may be recalled and the proceedings against Respondent No.14 may be initiated for filing false affidavit.

4. On the other hand, the learned Additional Public Prosecutor appearing for the Respondent/State, relying upon the provisions of section 362 of Cr.P.C. submits that, since the reasoned order is passed by the Division Bench of this Court while disposing of the Criminal Writ Petition No. 812/2012, and therefore, it is not desirable to interfere in the same.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for the applicant and the learned Additional Public Prosecutor appearing for the Respondent/State. With their able assistance, we have carefully considered the averments made in the application, annexures thereto and the judgments cited across the bar by the learned counsel appearing for the parties.

6. We have carefully perused the purport of the said judgments and we are of the opinion that, the order passed by the Division Bench of this Court is reasoned order and it does not appear to us that, the Division Bench while passing the said order was influenced by any misleading statement by the Respondent No.14. Apart from it, we do not think that, this is a exceptional case wherein, we shall exercise our inherent powers under Section 482 of the Criminal Procedure Code, for recalling the order passed on merits in Writ Petition No. 812/2012. Therefore, in view of the bar contained in Section 362 of Cr.P.C., we are not inclined to recall the order dated 18.12.2012, passed by the Division Bench of this Court in Criminal Writ Petition No. 812/2012.

7. Application sans merits, stands rejected.

(A. I. S. CHEEMA, J.)

(S.S. SHINDE, J.)

SGA/-