

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

**CRIMINAL APPLICATION NO. 1821 OF 2015
IN
CRIMINAL APPLICATION NO. 632 OF 2009**

Manoj s/o Prabhakar Lohar

.... APPLICANT

V E R S U S

Rahemat Bee Mohd. Hasan & Anr.

.... RESPONDENTS

.....

Mr.Rajendra S.Deshmukh, Advocate for Applicant.

Mr. Swapnil S.Patil, Advocate for R – 1.

Mrs. Pratibha Bharad, A.P.P. for R- 2 State.

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CORAM : V.M.DESHPANDE, J.

DATE : 15th APRIL, 2015

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PER COURT :

1. This is an application for stay of the further progress of R.C.C. No. 651/2005 pending on the file of the 3rd Judicial Magistrate First Class, Jalgaon.

2. Heard Mr.Rajendra S.Deshmukh, learned counsel

for Applicant, Mr. Swapnil S.Patil, learned counsel for Respondent No.1 and Mrs. Pratibha Bharad, learned A.P.P. for Respondent No. 2 - State.

3. The submission on behalf of the learned counsel for the applicant in support of the present application for stay is that, if stay is not granted and if further progress of R.C.C. No. 651/2005 is not stayed, then in that event, Criminal Application No. 632 of 2009 shall render infructuous since, according to the learned counsel for the applicant, learned Magistrate is proceeding with the matter.

4. After hearing the learned counsel for the applicant, following facts emerges.

Respondent No. 1 filed private complaint against the present applicant. In the said private complaint, it is alleged that the present applicant has committed offences punishable u/s 326, 506 of the Indian Penal Code. Learned Magistrate after verification statement, passed order of process on 26/04/2007. The said order of issuance of process was questioned by the present applicant before the learned Sessions Judge, Jalgaon by filing Criminal Revision Application No. 13/2008. The said Revision is dismissed by the learned revisional Court on 14/10/2008. After dismissal of the said Revision application, present applicant preferred application invoking inherent power and jurisdiction of this Court u/s 482 of the Code of Criminal Procedure by filing Criminal Application No. 632 of 2009. This Court on 03/03/2009 issued notice before admission in Criminal

Application No. 632 of 2009. Present respondent No. 1 appeared and the matter is contested. This Court on 31/08/2010 issued 'Rule' in the proceedings filed on behalf of the present applicant u/s 482 of the Code of Criminal Procedure. However, the order dated 31/08/2010 clearly shows that no stay was granted to the proceedings filed against the present applicant, though by prayer clause 'C', specific prayer was made for stay of the further proceedings of R.C.C. No. 651/2005. Further, even no liberty was sought by the present applicant to move in case of exigencies.

The record shows that from 31/08/2010 till filing of the present application for stay on 06/04/2015, no steps were taken by the present applicant for early disposal of the petition u/s 482 of the Code of Criminal Procedure.

5. In the back-drop of above, let us appreciate the contention of the present applicant.

The private complaint filed by respondent No. 1 against present applicant is u/s 326 and 506 of the Indian Penal Code. Thus, it is clear that it is warrant case instituted otherwise than police report. The procedure is enumerated from Section 244 to 250 of the Code of Criminal Procedure in respect of the cases instituted otherwise than police report. Section 245 of the Code of Criminal Procedure reads as under,

“ When accused shall be discharged -

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded that

no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous state of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. ”

6. In view of the plain reading of Section 245, if the learned Magistrate is of the opinion and view that upon taking of the evidence referred to in Section 244, for the reasons to be recorded if no case is made out against the accused, learned Magistrate is to discharge the accused. According to the learned counsel for the applicant, the evidence is being recorded by the learned Magistrate. Obviously, the said evidence is being recorded by the learned Magistrate in view of Section 244 of the Code of Criminal Procedure. After the evidence of the complainant, it is always open for the learned Magistrate to deal with the matter in accordance with law.

7. In that view of the matter, the apprehension that the applicant will be seriously prejudiced, in my view, is totally mis-placed. Further, it was open for the present applicant to take necessary steps for the disposal of the present matter.

8. The totality of the aforesaid, leads me to pass the following order.

The present Criminal application is rejected.

[V.M.DESHPANDE, J.]

KNP/Cr.Apln. 1821.2015