

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
BENCH AT AURANGABAD.  
CRIMINAL APPELLATE JURISDICTION.**

**Criminal Revision Application No.128 Of 2014.**

Mrs. Sumantai Vasantrao Palve.

Age : 54 Years., Occ.: Household & Agri.

R/o.: Maliwada, Evle Lane, Ahmednagar. :: **Applicant.**

**Versus**

(1) The State of Maharashtra.

(2) Gopi Indrabhan Talreja.  
Age : 27 Years., Occ.: Business.

(3) Dinesh Chandumal Talreja.  
Age : 35 Years., Occ.: Business.

(4) Mrs. Jasi Tikamdas Talreja.  
Age : 60 Years., Occ.: Household.

(5) Mrs. Lata Santoshkumar Talreja.  
Age : 34 Years., Occ.: Business.

(6) Mrs. Ishawari Chandumal Talreja.  
Age : 48 Years., Occ.: Business.

(7) Mrs. Harsha Dinesh Talreja.  
Age : 28 Years., Occ.: Business.

Respondent Nos. 2 to 7

R/o.: Opposite Mahalaxmi Udyan,  
Bhutkarwadi, Savedi, Ahmednagar. :: **Respondents.**

**Appearance =>**

Mr. P.K. Palve, Advocate h/for Mr. D.K. Dagadkhair, Advocate for the Applicant.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra / Respondent No.1.

Mr. Manjusha Jagtap, Advocate for Respondent Nos.2 to 7.

**CORAM : V.M. DESHPANDE, J.**  
**DATE : 9<sup>th</sup> MARCH, 2015.**

**Per Court :-**

Rule. Rule made returnable forthwith. Heard finally, with consent of both the parties.

[2] Heard Mr. P.K. Palve, learned counsel for the Applicant, Mr. V.H. Dighe, learned Additional Public Prosecutor for the State and Mr. Manjusha Jagtap, learned counsel for Respondent Nos.2 to 7.

[3] In a State Case for the offences punishable under Section.s. 452, 143, 147, 149, 323, 504, 506 of the Indian Penal Code and under Section 37(1) read with 135 of the Bombay Police Act, trial was going on before the learned Judicial Magistrate, F.C., Court No.VI, Ahmednagar.

[4] During the course of evidence, since the ingredients for the offence punishable under Section 307 of the Indian Penal Code was made out, as it was the case of present Applicant, she filed an application for alteration of Charge. Said application is at Exhibit – 102 before the learned Magistrate. Application Exhibit – 102 is also counter signed by the learned Assistant Police Prosecutor incharge of the case. Said application was hotly contested by Respondent Nos. 2 to 7 by fling reply at Exhibit – 105.

[5] On 11<sup>th</sup> February, 2014 an application was moved by the present Applicant through learned Assistant Police Prosecutor for filing written notes of argument in support of application Exhibit – 102. The learned Magistrate allowed the said application Exhibit – 107 and time was granted to file written notes of argument till next date and matter was fixed on 21<sup>st</sup> February, 2014. Roznama dated 21<sup>st</sup> February, 2014 shows that without granting opportunity to file written submission in support of Application Exhibit – 102, the learned Magistrate decided the application on the very same day and rejected the application. One

of the observation of the learned Magistrate is Paragraph No.3 of the impugned order is that inspite of sufficient opportunity is granted, complainant has failed to file the written argument.

[6] There is no dispute amongst the parties before me that, time was granted by the learned Magistrate to the Complainant through the learned Assistant Police Prosecutor to file detail written notes of argument in support of Application Exhibit – 102. In that view of the matter the observation made by learned Magistrate in paragraph No.3 of impugned order is factually incorrect, since on the said date the case was for filing written notes only.

[7] Once the learned Magistrate granted time to file written notes of argument in support of application Exhibit – 102, the learned Magistrate normally ought not to have proceed with hearing of the application Exhibit – 102 in absence of written notes of argument, especially when there was no time lag between the application Exhibit – 107 requesting time to file written notes of argument and decision of application Exhibit – 102.

[8] In that view of the matter, order dated 21<sup>st</sup> February, 2014 passed by learned Judicial Magistrate, F.C., Court No.VI, Ahmednagar below application Exhibit – 102 in Regular Criminal Case No.334 Of 2004 is hereby set aside. The present Applicant is granted opportunity to file written notes of argument, as permitted by the learned Magistrate himself, through learned Assistant Police Prosecutor on record, within two weeks from today.

[9] The learned Magistrate shall decide application Exhibit – 102 afresh in the light of written notes of argument, filed on behalf of the Applicant, through the learned Assistant Police Prosecutor. With this Criminal Revision Application is allowed. Rule is made absolute.

**(V.M. DESHPANDE, J.)**