

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

Criminal Writ Petition No. 933 of 2014

Kashinath s/o. Dhondiba Kamble,
Age : 58 years,
Occupation : Pensioner,
R/o. Ambedkarnagar, Gangakhed,
Taluka : Gangakhed,
District : Parbhani.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Nanalpeth Police Station,
Parbhani,
Taluka & District : Parbhani.
2. The State of Maharashtra,
Through Office of D.G.P.,
In R.C.C. No. 283/2007,
Pending before the Ld. J.M.F.C.-3,
Parbhani.
3. Rahul Kashinath Kamble,
Age : 30 years,
Occupation : Service,
R/o. Sujata Colony, Parbhani,
Taluka & District : Parbhani.
4. Bhaurao s/o. Haribhau Wakle,
Age : 42 years,
Occupation : Service,
R/o. Parsawat Nagar, Parbhani,
Taluka & District : Parbhani.
5. Vitthal s/o. Satvaji Maske,
Age : 65 years,
Occupation : Nil.

6. Subabai Vitthal Maske,
Age : 60 years,
Occupation : Household.
7. Navnath s/o. Vitthal Maske,
Age : 35 years,
Occupation : Agriculture.

Respondent Nos.5 to 7,
R/o. Masla,
Taluka : Gangakhed,
District : Parbhani.

.. Respondents.

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Mr. Sudhir K. Chavan, Advocate, for the petitioner.

*Mr. U.S. Mote, Additional Public Prosecutor, for
respondent nos.1 and 2.*

Mr. S.S. Rathi, Advocate, for respondent nos.3 to 7.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 23RD MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. S.K. Chavan for the petitioner, learned APP Mr. U.S. Mote for respondent nos.1 and 2, and Adv. Mr. S.S. Rathi for respondent nos.3 to 7.
2. Rule. Rule made returnable forthwith. By consent, heard finally.

3. The petitioner herein is the original complainant in Regular Criminal Case No. 283/2007. The trial had commenced and PW 1 was examined on 9th January 2010. PW 2 was examined on the same day. PW 3 was examined on 24th February 2010. PW 4 was examined on the same day. PW 5 was examined on 5th March 2010. The accused was given an opportunity to cross examine all the witnesses examined by the prosecution. On 6th May 2010, the complainant filed an application below Exhibit 76, contending therein that he needs to examine some more witnesses. In fact, prior to 6th May 2010, the prosecution had filed a Pursish for closing evidence. It is pertinent to note that in the application below Exhibit 76, the complainant had neither given the list of witnesses nor the issues on which they were to be examined. In fact, the records would reveal that the complainant had filed the said application before the learned Chief Judicial Magistrate at Parbhani and it was received by the learned Judicial Magistrate (F.C.) by Registered Post (A.D.). On 15th April 2010, the learned Judicial Magistrate (F.C.) had directed that the application which is received through administration of learned Chief Judicial Magistrate, Parbhani, by R.P.A.D., be put up in the said case on given date of concerned R.C.C. and be attached with record & proceedings. After obtaining say from the prosecution, the learned Judicial Magistrate (F.C.) vide order dated 10th September 2013, has rejected the said application by assigning sound and justifiable reasons and enquiring into the matter personally. In fact, the learned Judicial Magistrate (F.C.) was to take action under Section 340 of the Code of Criminal Procedure, 1973, against the complainant. However, taking into consideration the fact, that it was an old matter, the learned Judicial

Magistrate (F.C.) had not initiated any enquiry but had given directions to the Police to take appropriate action against the complainant. Looking to the facts of the matter, as well as grievance of the accused, while rejecting the application vide order dated 10th September 2013, the learned Judicial Magistrate (F.C.) (Court No.3), Parbhani, had directed to issue letter to in-charge of Police Station, Nanal Peth, to take appropriate action against the complainant if at all any wrongful acts are done by him while availing the facility of leave travel concession.

4. On 18-5-2011, the complainant filed another application below Exhibit 84, contending therein that the learned Additional Public Prosecutor Mrs. Deshmukh had not prosecuted the matter properly. That, the statements were not read over to them. That, the learned Additional Public Prosecutor has filed '*close evidence*' Pursish. The complainant has stated that, in fact, the court has allowed the application filed below Exhibit 84 and had recalled PW 1 to PW 5. Summons were issued to all witnesses.

5. The order dated 10th September 2013, passed by the Judicial Magistrate (First Class), below Exhibit 44, was challenged by filing a revision application. The learned revisional court had perused the record and considered arguments advanced by the respective parties. The learned revisional court had also considered the provisions under Section 311 of the Code of Criminal Procedure, 1973. The learned revisional court had rightly observed that the learned Judicial Magistrate (F.C.) had not considered the application in its proper perspective and without assigning any reasons, had recalled the witnesses, without there being any averment

in the application, to the effect that the witnesses be recalled for proving a particular issue. In fact, the application was sans merits.

6. It further appears that the complainant had not filed an application for recalling the witnesses but for examining additional witnesses whose identity was not mentioned in the application. The learned Judicial Magistrate (F.C.), who had referred the matter to Nanal Peth Police Station, after considering the conduct of the complainant, had still proceeded to recall all witnesses in view of Section 311 of the Code of Criminal Procedure. The very fact, that no reason was assigned for recalling the witnesses who were already cross examined by the complainant, the revisional court had rightly allowed the revision filed by the present respondent nos.3 to 7 and quashed the order passed by the learned Judicial Magistrate (First Class), below Exhibit 84, dated 10th September 2013. The learned Additional Sessions Judge, Parbhani, has assigned sound and justifiable reasons for allowing revision. No interference is warranted. Hence, the petition being sans merits, deserves to be dismissed.

7. In the result, the petition is dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

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