

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

Criminal Writ Petition No. 1010 Of 2013.

Tarabai Dinesh Ishi.

Age : 49 Years., Occ.: Service.

R/o.: Taramati Niwas, Opposite

Tehsil Niwas,

Tal. Sakri, Dist. Dhule.

:: Petitioner.

Versus

(1) The State of Maharashtra.

(2) Dinesh Atmara Ishi.

Age : 36 Years., Occ.: Service.

R/o.: Plot No.8,

Behind Kai, Walchand Bapuji Hotel,

Gulab Nagar, Mohadi, Laling,

Dist. Dhule.

:: Respondents.

Appearance =>

Mr. Amit Savale, Advocate for the Petitioner.

Mr. V.D. Godbharle, Additional Public Prosecutor for the State of Maharashtra.

Mr. A.D. Pawar, Advocate for Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 9th MARCH, 2015.

Per Court :-

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

[2] Application under Section 205 of the Code of Criminal Procedure was moved by the present petitioner on 21st March, 2013 for exemption in Summary Criminal Case No.338 Of 2012. The learned Judicial Magistrate, F.C., Shirpur, Dist. Dhule vide his order dated 12th April, 2013 rejected the said application on the ground that, since other accused are not served, therefore, application was rejected.

[3] Order passed by the learned Magistrate cannot stand to the touchstone of the law. If the complainant is unable to serve the other accused, it was open for the complainant to file necessary application to secure the presence of those persons. Surely that cannot be a reason for dismissing the application filed by the present petitioner under Section 205 of the Code of Criminal Procedure, especially when she has made out a case for her personal exemption.

[4] In that view of the order, impugned order is set aside and quashed. It is directed that the application filed on behalf of the petitioner, in future, for personal exemption, shall be considered on its own merit. With this Writ Petition is allowed. Rule is made absolute.

(V.M. DESHPANDE, J.)