

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

CRIMINAL WRIT PETITION NO.3561 OF 2014
WITH
CRIMINAL WRIT PETITION NO.3562 OF 2014

Shri Tejubhai Isardas Lalwani
and another.

..Petitioners

Versus

The State of Maharashtra
and another.

..Respondents

....

Mr.Umesh Mankapure, Advocate for the Petitioners.
Mr. A.S. Shitole, APP, for the State.

....

CORAM : A. R. JOSHI, J.

DATE : 9th APRIL, 2015

P.C.

1. Heard the learned Counsel for the petitioners. Also heard the learned APP for the State.

2. Both the Petitions are preferred challenging the order dated 17th June, 2014 passed by the Additional Sessions Judge, Solapur. Said order reads thus :

“

ORDER

1) Cri. Rev. Application No. 74/12 of accused persons is dismissed.

- 2) Cri. Rev. Application No.73/12 of complainant is partly allowed. The impugned order issuing process is modified, and the learned CJM, Solapur is directed to issue process u/s. 380 r.w. 34 of IPC against the accused persons.
- 3) R & P of RCC No.1505/11 be sent to the lower Court along with copy of this Judgment.
- 4) Copies of Judgment be kept in both Revisions.”

3. Initially a private complaint was lodged bearing RCC No.1505/2011 by one Rakesh Narwani, then complainant, who is present respondent No.2, against the present petitioners for taking action against them for the offences punishable under Sections 395, 452, 441, 447 read with Section 34 of IPC. It was alleged in the complaint that the present petitioners entered the shop of the complainant on the relevant day and ransacked the furniture and took away certain documents and other things from the drawer by breaking it open. They used some firearm also. During this incident three other associates of the present petitioners were present outside the shop and all the five flee away from the shop. Prior to that both the petitioners were giving threats of dire consequences of killing the complainant. It is also alleged in the complaint that in fact a sort of dacoity was committed in the shop on the relevant day. On the said complaint, initially orders were

passed by the Chief Judicial Magistrate, Solapur on 23.9.2011 rejecting the prayer for investigation under Section 156(3) of Cr.P.C... Thereafter statements of various witnesses were recorded by the Chief Judicial Magistrate and ultimately the process was issued against the present petitioners for the offences punishable under Sections 447, 452 read with Section 34 of IPC. The complaint was dismissed as against the unknown three more persons alleged in the complaint. So also the complaint was dismissed against the present petitioners for the offences punishable under Sections 395, 441 read with Section 34 of IPC.

4. The learned Counsel for the present petitioners submitted that the said dismissal of the complaint against the petitioners for the offences punishable under Sections 395 and 441 read with Section 34 of IPC amounts to acquittal and as such there could not have been a Revision maintainable challenging the said order dated 9.2.2012 passed by the C.J.M. Solapur. It is a factual position that the said order dated 9.2.2012 was challenged by the complainant vide Revision Application No.73 of 2012 and it was also challenged by the present petitioners vide Revision Application

No.74 of 2012. Both the said Revisions Applications were disposed of by the order which is impugned in the present matter and which is reproduced earlier at the threshold of this order.

5. Under the writ jurisdiction it is necessary to interfere with the said impugned order more so when the plea is taken on behalf of the petitioners that there could not have been a Revision on the acquittal of the present petitioners for the offences punishable under Sections 395, 441 read with Section 34 of IPC. On another count also, said impugned order is required to be interfered for the reason that there is no clarity in the final order dated 17.6.2014 as to whether the directions given to the CJM, Solapur to issue process under Section 380 read with Section 34 of IPC are in addition to the earlier issuance of process for the offences punishable under Section 447, 452 read with Section 34 of IPC. In fact, there is no clarification in the said impugned order whether the present petitioners are now to be tried for the offences punishable under Sections 447, 452 and 380 read with Section 34 of IPC or only for the offence punishable under Section 380 read with Section 34 of IPC.

6. Apart from the above, there is still necessity to interfere with the impugned order under writ jurisdiction as the material before the Chief Judicial Magistrate by way of lodging of the complaint by the complainant has not been properly appreciated by the trial Court and also by the Additional Sessions Judge, Solapur. Needless to mention that at the time of issuance of process for the alleged offences the averments in the complaint are required to be considered. Now, without going much into the details regarding the contents of the said complaint, suffice it to say that the Additional Sessions Judge, Solapur to take care of the said averments and to deal with both the Revisions Application Nos.73/2012 and 74/2012 afresh, after giving opportunity to the complainant and also the present petitioners of being heard. Needless to mention that the learned Additional Sessions Judge, Solapur shall take care of the objection now raised before this Court as to non-maintainability of the Revision filed by the complainant in view of dismissal of the complaint against the petitioners for the offences punishable under Sections 395, 441 read with Section 34 of IPC. This aspect shall be dealt with by the learned Additional Sessions Judge, Solapur in accordance with law

and to come to the rightful conclusion. In the result, the preset Writ Petitions are being disposed of with following order :

:: ORDER ::

- i. The impugned order dated 17th June, 2014 passed by the Additional Sessions Judge, Solapur in Criminal Revision Application Nos.73/2012 and 74/2012 is set aside.
- ii. Both the Criminal Revision Application Nos.73/2012 and 74/2012 are to be re-heard, in view of the aforesaid directions, by the learned Additional Sessions Judge, Solapur in accordance with law by keeping open all contentions of the complainant and also the present petitioners open. Needless to mention that the learned Additional Sessions Judge, Solapur shall issue a notice to the original complainant for appearance before it at the time of hearing of both the said Revision Applications.
- iii. Both the Writ Petitions are disposed of accordingly.

(A. R. JOSHI, J.)