

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

rpa

CRIMINAL WRIT PETITION NO.3347 OF 2013

Mahendra Bhausahab Gursale

.. Petitioner

Vs.

Babab Vithu Chavare & Anr.

.. Respondents

....

Mr.Amit M. Shete, Advocate for the Petitioner.

None for Respondent No.1.

Ms.P.P. Bhosale, A.P.P. for Respondent – State.

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CORAM : M. L. TAHALIYANI, J.

DATED : FEBRUARY 3, 2015.

P.C. :

Heard the learned counsel Mr.Shete for the petitioner.
None for respondent no.1. Heard the learned Additional Public
Prosecutor Ms.Bhosale for the respondent no.2 – State of
Maharashtra.

2 The petitioner is the complainant in Summary Criminal
Case No.1447 of 2004, pending in the Court of Judicial Magistrate
First Class, Satara. The respondent no.1 is the accused in the said
case. The petitioner is aggrieved by the order passed by the learned
Magistrate on 6th August, 2013 below Exhibit-89. Exhibit-89 was the

application moved by the petitioner for recalling the order passed by the learned Judicial Magistrate on 20th July, 2013, directing that there should not be any cross-examination of the defence witness /accused/respondent no.1. The reason recorded by the Magistrate is that the counsel appearing for the petitioner did not appear for cross-examination of the witness. The petitioner in his application had stated before the Magistrate that his counsel was out of the town, and therefore, he could not attend the Court.

3 The learned Magistrate without recording any reasons and without consideration of prayer rejected the application for recall of the order only on the ground that the reasons had already been recorded for directing no cross. If one reads the earlier order of the Magistrate, it could be seen that the Magistrate appeared to be unhappy only because the advocate did not appear in time.

4 The learned trial Magistrate should have realized that the litigant cannot be made to suffer only because his advocate was not able to reach the Court within time. It is not that there were no other cases to be handled by the learned Magistrate. The learned Magistrate could have adjourned the case and could have taken up another case. Such capricious or arbitrary orders should not have been passed

unless there was absolute negligence and non co-operation on the part of the petitioner.

5 In view thereof, I pass the following order:

:: ORDER ::

- (i) The writ petition is allowed.
- (ii) The order passed by the learned Judicial Magistrate First Class, Satara, below Exhibit-89, is set aside.
- (iii) The learned Magistrate is directed to allow the petitioner to cross-examine the respondent no.1 in Criminal Case No.1447 of 2004.
- (iv) Criminal writ petition stands disposed of accordingly.

(JUDGE)