

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

CRIMINAL APPLICATION NO. 15 OF 2015

Mr. Bharat Narotam Doshi

... Applicant.
(Org. Accused)

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Amol Phouzdar and Savani Gupte i/by Khaitan & Co. for
the Applicant.

Mrs. S.V. Gajare, APP for the State.

CORAM : A.V. NIRGUDE, J.

DATE : 01st DECEMBER, 2015.

P.C. :

1 Perused the explanation dated 5th October, 2015 received from the learned Metropolitan Magistrate Shri Laxmikant A. Bidwai. The facts leading to the explanation are required to be stated in short as under :

2 The criminal case no. 1305/SF/2014 was pending before the learned Metropolitan Magistrate, named above. This was a case filed by the Deputy Director, Industrial Safety and Health, Mumbai, alleging commission of an offence, punishable under section 8 (1) of the Factories Act, 1948. On 6th May, 2015, the complainant moved an application, seeking withdrawal of the prosecution. The State of Maharashtra had also decided to withdraw the criminal case. However, the

learned Magistrate refused to allow withdrawal and therefore, the accused came before this court and made a grievance that the learned Magistrate ought to have allowed withdrawal of the criminal case. This court vide order dated 23rd July, 2015 observed that the learned Magistrate had failed to understand that the prosecution can be withdrawn by the public prosecutor or additional public prosecutor, realizing the provisions of Section 321 of the Criminal Procedure Code. My learned predecessor also observed that the learned Magistrate had failed to realize that an additional public prosecutor or assistant public prosecutor always represented the State Government. This order also directs the learned APP appearing in the lower court to make an application in writing for withdrawal of the prosecution, if he was instructed by the department to do so. The learned Magistrate was directed to pass order after hearing both the sides. On 6th August, 2015, an application was moved by the learned APP for taking the case on that day on board and also for seeking withdrawal of the prosecution. The learned Magistrate observed on this application that similar application was already pending since 6th May, 2015. Therefore, new application was not required to be decided and the case remained pending. A complaint was made to this court. This court vide order dated 21st September, 2015 observed that despite of directions of this court, the learned Magistrate had declined to pass necessary orders. My learned predecessor, prima facie, held that the court's order

was flouted by the learned Magistrate. My learned predecessor, therefore, directed the Registry of this court to call for explanation from the concerned Magistrate.

3 As stated above, I perused the explanation. The relevant portion of the explanation reads as under :

“f] Being the matter was taken on board on 06.08.2015, therefore, its entry was taken at Sr.No. 88 on the daily board maintained by the Presiding Officer and Interpreter too. As well on the board of Presiding Officer itself the matter is shown to be disposed off as withdrawn and encircled by red ink. In like manner on Interpreter's board too matter is shown to be disposed off by encircling it. For the kind perusal of Your Honour copies of board dtd. 06.08.2015 maintained by Presiding Officer and Interpreter are annexed herewith at **Exh.B & C.**”

4 The learned Magistrate is trying to suggest that by encircling the number of case on the “board” in red ink, he had disposed of the case, allowing withdrawal. He has impliedly admitted that a specific order to that effect was not passed either in the Rozanama or on the Application dated 6th May, 2015 or 6th August, 2015. The learned Magistrate cannot place reliance on markings made on the “board”. Such remarks on “Board” are made after the judicial orders are passed. The practice followed by the learned Magistrate is incorrect. The learned Magistrate ought to have passed a specific order.

When explanation was sought from him, at least at that time, he ought to have admitted that he could not pass required order on 6th August, 2015 or thereafter and that was an error on his part. Instead of admitting this, he tried to mislead this court by placing reliance on the 'mark' made on the "board". One may also suspect that the 'mark' on the board/s was made subsequently. Had this not been complained about, I am sure, the case would have continued before him.

Technically speaking the case is still pending before him because there is no specific order so far passed on the application, seeking withdrawal of the prosecution.

5 I am, therefore, constrained to pass following order :

- i. The criminal case stands disposed of as withdrawn pursuant to the application, seeking withdrawal of the prosecution.

6 The criminal application is disposed of in the above terms.

7 A copy of this order be sent to the learned Magistrate immediately and to the Registrar General for further action on the administrative side, if needed.

(A.V. NIRGUDE, J.)

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