

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

CRI. WRIT PETITION NO. 436 OF 2015

Dhananjay Sambhaji Gaikwad & Ors. ... Petitioners.

V/s.

The State of Maharashtra ... Respondent.

Mr. Varad Deore, Advocate for the Petitioners.

Ms. V.S. Mhaispurkar, APP for the State.

**CORAM : M.L.TAHALIYANI,J.
DATE : 04 FEBRUARY, 2015**

P.C. :

1 Not on board. Mentioned. Taken on production board in view of urgency.

2 Heard the learned counsel appearing for Petitioners and the learned additional public prosecutor for the State.

3 This writ petition impugns the orders passed by the learned Judicial Magistrate, F.C., Solapur on 20th November, 2014 and 20th January, 2015. The petitioners/applicants are facing trial for the offences punishable under sections 143, 147 & 149 r/w. 341 of IPC, section 149 r/w.323 of IPC and section 149 r/w. 504 of the Indian Penal Code.

4 At this stage, I am informed that the offences punishable under sections 341, 323 and 504 read with section 149 are compounded. As such the petitioners are facing trial for the offences punishable under sections 143 and 147 of the Indian Penal Code. The case is of the year 2009. The petitioners / applicants were absent on 20th November, 2014. The learned Magistrate directed the forfeiture of bonds of the petitioners/applicants and imposed penalty of Rs.3000/- each on the applicants. He also issued non-bailable warrants against the applicants and the notices to the sureties of the applicants. The learned counsel for the petitioners/applicants made an application for cancellation of non-bailable warrants. On 20th January, 2015, the said application came to be rejected. It appears that the learned Magistrate insisted for appearance of the applicants before their application for cancellation of warrants could be heard. The learned counsel for the petitioners / applicants submitted that the order of this court in criminal writ petition no. 4429 of 2013 dated 24th December, 2013 was brought to the notice of the learned Magistrate. Despite that the Magistrate refused to cancel the warrants.

5 It is submitted by the learned counsel for the petitioners/applicants that the applicants have been remaining present on all dates of hearing. The learned additional public prosecutor, after having gone through the Rozanama, has submitted that the applicants were not defaulters inasmuch

as their attendance before the court is concerned. In such circumstances, instead of wasting valuable time of the court on such a small issue, the learned Magistrate should have cancelled the warrants and should have asked for fresh bonds by the accused and their sureties. It was possible for the learned Magistrate to recover penalty for breach of the earlier order. However, that orders also appear to be harsh inasmuch as the applicants had been regularly attending the court.

6 Keeping all these facts in view, I pass the following order :

- i. Both the orders passed by the learned Magistrate i.e. dated 20th November, 2014 and 20th January, 2015 are hereby set aside.
- ii. The petitioners/applicants shall remain present before the trial court on the next date of hearing.
- iii. The petitioners/applicants and their sureties shall execute fresh bonds in sum of Rs. 3000/- each for their appearance before the trial court to the satisfaction of the trial court.

7 Writ petition stands disposed of accordingly.

(JUDGE)