

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2129 OF 2015

Mr. Pankaj P. Doshi (N.R.I.) ... Petitioner.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Niyam Bhasin, advocate for petitioner.

Respondent No. 3 in person.

Mr. D.R. More, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 7, 2015

P.C.:

1 Heard the learned Counsel for Petitioner and respondent in person.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the original complainant in
C.C. No. 27/SW/2012 pending before the Additional Chief
Metropolitan Magistrate, 8th Court, Esplanade, Mumbai. The
proceedings pertain to the year 2012. The prayer clause (a) in the
present Writ Petition is as follows :

“(a) This Hon'ble Court in its supervising writ jurisdiction be
pleased to quash the Order dated 20/4/2015 adopted by the 8th
Additional Chief Metropolitan and to direct the said Court to
refrain from arriving at a final verdict until Complainant is
allowed to lead evidence and examine his witnesses and present
oral and/or final written arguments.”

4 The facts of the case are as follows :

(i) On 27/10/2014 P.W. 1 Mr. Mahendra Hargovind Doshi was
examined at the stage of evidence before charge before the learned
Magistrate. Mr. Mahendra Doshi was cross-examined by the accused
in person.

(ii) Thereafter, the advocate representing the complainant has filed a pursis, which reads as follows :

“The Accused has completed cross of Mr. Doshi and on behalf of complainant no further examinations in nature of cross are required hence this pursis.”

The said pursis was filed on 24/2/2015. The learned Magistrate had construed the same as evidence closed pursis.

(iii) On 10/4/2015 both the parties were present. The complainant had filed an application below Exh. 49 for recalling of the witness. The said application was rejected. Written submissions dated 13/4/2015 were made below Exh. 51. The complainant has filed written submissions dated 14/4/2015. Written submissions were given by the other parties. The application was posted for necessary order alongwith final order on the complaint. On 20/4/2015 learned Magistrate had adjourned the matter and the complaint was fixed for argument for framing of charge or dismissal of the complaint and the

matter was adjourned to 1/6/2015. This is the order under challenge.

5 It is pertinent to note that the present petition was filed on 26/4/2015. No steps were taken by the learned Counsel for the petitioner to take the matter on board or to seek necessary directions/orders. On 10/8/2015 learned Magistrate has observed that the case is now fixed for passing of the order on the said complaint whether the charge could be framed or the accused could be discharged. It appears that the complainant was present with the advocate and a pursis was filed below Exh. 56 and it was demonstrated before the Court that present proceedings is currently seized by the Hon'ble High Court in Writ Petition No. 2129 of 2015. On 3/9/2015 the learned Magistrate had passed an order that the Constituted Attorney of the original complainant has intimated to the Court that the present proceeding is currently seized by the Hon'ble High Court in Writ Petition. It is further observed that it is intimated by virtue of the said pursis that the said Writ Petition is listed before

Hon'ble High Court on 7/10/2015. It is further observed that it is submitted that this Court should not proceed further and to await the directions of Hon'ble High Court. That the accused No. 2 who is present before this Court today had demonstrated before the Magistrate that the said Writ Petition is only on stamp number and the High Court has not stayed the said proceedings. In view of this, the matter is adjourned to 12/10/2015.

6 In fact, without even removing office objections or circulating the matter, it would not be proper on the part of the learned Counsel for the petitioner to demonstrate before the Magistrate that no orders should be passed as the High Court is seized with the matter. That in the present compilation, copy of the complaint or the list of witnesses is not annexed.

7 Learned Counsel submits that he had filed the evidence close pursis only to the extent of the complainant and that too only at the instance of the Magistrate. According to the learned Counsel, he had

obliged the Magistrate since the learned Magistrate had asked him to file evidence close pursis. Such a submission by an officer of the Court is unwarranted and will not inspire confidence of the Court and no adverse observations or inference can be drawn against the Presiding Officer.

8 Upon perusal of the pursis, it is clear that the advocate representing the complainant had stated that the accused has completed cross of Mr. Doshi and no further examination in the nature of cross is required. In fact, the contents of the said pursis do not make out a definite case that the complainant desires to examine any other witness.

9 The Learned Counsel for the Petitioner submits that on 6th April, 2015 the advocate for the petitioner had filed an application before the Magistrate that due to inadvertent error advocate for the complainant closed the evidence sans client's instructions on last date and and that in state of confusion pursis was hurriedly

handwritten and supplied relating to morning matter at 3 p.m. The application was made for recalling of Mr. Mahendra Doshi and to take proper instructions from the complainant. The application below Exh. 49 was for a limited purpose and that was for recalling Mr. Mahendra Doshi as witness. Learned Magistrate had rightly observed that the advocate for the complainant had closed the evidence as far as Mr. Mahendra Doshi was concerned and had rejected the application.

10 Today, learned Counsel for the Petitioner submits that the Petitioner was not permitted to examine the other witnesses. In fact, no application was made before the Learned Magistrate requesting the Court to examine other witnesses. Taking into consideration the fact that the case was almost more than 3 years old and that the accused happens to be senior citizen and are suffering from old age ailment, the learned Court wanted to proceed with the matter.

11 The respondent No.2 is present before the Court and it can be seen that he is virtually suffering from old age ailment. It is also

submitted by him that he is suffering from paralysis. That the accused are conducting the trial in person. Being senior citizen, the learned Magistrate had wanted to proceed with the trial in accordance with law. The respondent No. 2 herein submits that the Counsel representing the Petitioner before the High Court had filed applications before the Magistrate although he was not empowered to do so. That issue can be dealt with by the Magistrate and today this Court need not go into the said issue.

12 As on today, it fairly appears that the advocate for the complainant had voluntarily filed an application of evidence closed pursis and thereafter, an application was made for recalling the complainant, which was rejected. No fault can be found with the orders passed by the learned Magistrate. Moreover, the impugned order is dated 20th April, 2015. Present petition was filed on 26th April, 2015 and is listed before this court as per CMIS. Learned Counsel for the Petitioner had not taken any efforts to circulate the matter but had misled the learned Magistrate by requesting him to

adjourn the matter for want of directions and orders by the High Court. The said application was misconstrued. Hence, this Petition being sans merit is rejected. The learned Magistrate shall proceed with the case in accordance with law. The order dated 20/4/2015 passed by the learned Magistrate does not call for any interference.

13 The Rule is discharged. Writ Petition is disposed of accordingly.

Office to communicate this order to the concerned Court forthwith.

(SMT. SADHANA S. JADHAV,J)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment/order.**