

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.4040 OF 2014**

Atul Raghunath Chitnis

...Petitioner.

versus

Shivsai Enterprises and another

..Respondents.

.....

Mr. Kapil P. Dave for the Petitioner.

Ms. P.S. Nagurkar i/b Mr. N.P. Deshpande for Respondent No.1.

Ms. Sharmila Kaushik, Addl.P.P. for the State.

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CORAM : A.S. GADKARI, J.**20th January, 2015****P.C. :**

By the present Writ Petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for quashing and setting aside the order of issuance of process dated 7th May, 2013 issued by the learned J.M.F.C. Court No.5, (Link Court), Pune in S.C.C. No.9122 of 2013 and the order dated 10th September, 2014 passed by the Additional Sessions Judge, Pune in Criminal Revision Application No.10 of 2014.

2. It is to be noted here that the Petitioner herein without challenging the order of issuance of process before the Sessions Court at the first instance, has directly approached this Court for quashing the same. The learned counsel appearing for the Respondent No.1

submitted that the Petitioner has not availed of the substantive alternate remedy which is available at his disposal and this Court may not exercise its jurisdiction under Article 227 of the Constitution of India.

3. It is further to be noted that the Petitioner had approached the Additional Sessions Judge by way of Criminal Revision Application No.10 of 2014 thereby challenging the order dated 7th October, 2013 passed below Exhibit 21 in S.T.C. No.9122 of 2013. Even the Revisional Court in its order dated 10th September, 2014 in paragraph No.10 has categorically observed that the accused instead of challenging the order of issuance of process, had filed an application below Exhibit 21 inter alia challenging the maintainability of the complaint. The Revisional Court after taking into consideration the facts of the said impugned order, was pleased to reject the Revision Application. The said impugned order dated 10th September, 2014 is also under challenge in this Petition.

4. During the course of arguments, it was pointed out to the learned counsel appearing for the Petitioner that the present Petition suffers from multifariousness of cause of action. The learned counsel appearing for the Petitioner with utmost fairness at his command has considered the said legal position and submitted before this Court that

his client would prefer to file appropriate legal proceedings before the Sessions Court for challenging the order of issuance of process dated 7th May, 2013 issued by the Judicial Magistrate First Class, Court No.5, (Link Court), Pune in S.C.C. No.9122 of 2013. He, however, contended that as there is sufficient lapse of time in challenging the said order of issuance of process, the delay which has occurred may be condoned. It is needless to mention here that the Sessions Court will take into consideration the period which has been consumed by the Applicant in prosecuting the other remedies in this matter and will certainly give benefit of the provisions of the Limitation Act to the Petitioner.

5. In view of the above, without expressing any opinion in the present case, the Petition is disposed of with liberty to the Petitioner as stated herein above. It is further needless to clarify that the Sessions Court without being prejudiced by the order passed by this Court, will hear the Petitioner on its own merits.

(A.S. Gadkari, J.)