

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION (CWP) NO. 147 OF 2015

(Prabhakar s/o Punjabrao Nagre vs. State of Maharashtra thr. Secretary, Home Department & Anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
JUNE 11, 2015.**

Heard Shri Joshi, learned counsel for the petitioner and Shri Doifode, learned APP for the respondents.

The Prosecutor for State of Maharashtra in Sessions Trial No. 3 of 2013 on the file of Sessions Court, Akola, has filed present proceedings under Articles 226 and 227 of the Constitution of India, for expunging certain observations recorded by that Court in its judgment dated 16.12.2014.

The judgment convicts Accused No. 1 – Santosh Prakash Sonone of offences punishable under Section 498A of IPC and Section 306 of IPC. He has been acquitted of an offence punishable under Section 304-B of IPC. The other two accused viz. Prakash Shankar Sonone and Smt. Vimal w/o Prakash Sonone are acquitted of all the offences.

Shri Joshi, learned counsel submits that for valid reasons, which were placed in pursis before the Sessions Court, the witnesses were given up and the prosecution has every right to do so. After due application of mind, the decision was taken by the Prosecutor and hence adverse observations and remarks

against him in the impugned judgment are liable to be expunged.

The learned APP has invited our attention to the order dated 18.03.2015 passed by this Court in the present matter. He submits that thereafter an explanation in writing was submitted by the applicant before the Sessions Court and report of Court dated 01.04.2015 is on record. However, he has no instructions whether the acquittal of other accused persons has been challenged by the State Government or by victim or whether Accused No. 1 – Santosh has questioned his conviction in further appeal.

A perusal of report submitted by the Principal District and Sessions Judge shows that the outcome of final result could not have been in the mind of Prosecutor or judge when that decision to give up those persons was taken. The learned Sessions Court has reported that the apprehensions entertained by the Prosecutor that those witnesses could have been won over and could not have supported the case of prosecution, is not accepted by him.

However, in the light of the judgment of the Hon'ble Apex Court in the case of State of Gujarat vs. Kishanbhai & Ors., reported at (2014) 5 SCC 108, it is apparent that if the question of setting aside conviction of Accused No. 1 – Santosh is required to be looked into by this Court and at that stage non examination of witnesses is found to have materially affected the trial, this Court can make appropriate observations.

In the above matter, the Hon'ble Apex Court

has directed all State Governments to constitute a Committee to examine the cases of acquittal and to find out the officers at fault for defective investigation or for lapses in trial before the Court. If the acquittal of other accused persons is being looked into by this Court or then by such Committee, even at that juncture conduct of the Prosecutor can be looked into.

In view of this, it is apparent that the observations of the learned Sessions Court cannot be allowed to influence consideration by said Committee in accordance with the directions of the Hon'ble Apex Court. Hence, subject to such consideration and without affecting it in any way, we expunge the remarks against the present petitioner.

Writ Petition is thus partly allowed and disposed of. No order as to costs.

JUDGE

JUDGE

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