

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APPP) No. 1479 of 2014

in

Criminal Application (APPLN) No. 773 of 2010 (D)

(E. Gomati Vs. Automark Industries (India) Ltd. through its Managing Director, Yavatmal-1)

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

Court's or Judge's orders

Dr. R. S. Sundaram, Advocate for applicant
Shri Masood Shareef, Advocate for non-applicant

CORAM : P. N. DESHMUKH, J.

DATED : 6-2-2015

Heard learned counsel for both the sides.

2. By filing this application, applicant who is original accused has prayed for recalling or modification of order dated 20-8-2014 passed by this Court. Above order came to be passed in view of the statements made at bar by learned counsel appearing for both the sides to the effect that case before the trial Court was at the fag end and was for recording statement of accused under Section 313 of the Code of Criminal Procedure. In fact from the order, it also appears that the statement was also made that defence witnesses are also examined. Having regard to the statements as made aforesaid and on relying upon case of *Dashrath Rupsing Rahtod*, the application was disposed of as dismissed.

3. In the present application, the learned counsel for applicant/accused however, has placed on record certified copy of roznamas. Learned counsel for respondent/original complainant has not disputed the same. On perusal of roznamas, it appears that on 16-10-2014 i.e. after order dated 20-8-2014 is passed by this Court, evidence of complainant as witness no. 1 is adduced. In that view of the matter, it clearly appears that when order came to be passed by this Court on 20-8-2014, in fact no evidence has commenced.

4. In view of the facts based on statements made at bar by the learned counsel for both the sides, there appears to be error on the face of record. Thus, it is necessary to review order dated 20-8-2014 as no evidence was in fact commenced before the trial Court and thus, ratio relied upon on the case of *Dashrath Rupsing Rahtod* cannot be applied.

5. In view of the above, application is liable to allowed, however, by imposing suitable costs on both the sides as per order below.

ORDER

- (i) Criminal Application 773 of 2010 is allowed.
- (ii) Summary Criminal Case No. 832 of 2009 pending on the file of the Additional Chief Judicial Magistrate at

Yavatmal stands transferred to the competent Court at Chennai.

(iii) Learned trial Court to take necessary steps for effecting transfer of said case as aforesaid within two weeks from the date of receipt of writ of this Court.

(iv) Both sides are directed to pay reasonable costs of Rs. 1500/- each to the High Court Legal Services Sub-Committee, Nagpur within two weeks from today.

The application is, accordingly, allowed.

JUDGE