

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1539 OF 2007

Kausabai w/o Deorao Unde and others ...Applicants

versus

Anita Sanjay Unde ...Respondent

WITH
CRIMINAL APPLICATION NO. 475 OF 2007

Balasaheb w/o Deorao Unde ...Applicant

versus

Anita Sanjay Unde ...Respondent

.....
Mr. H.D. Deshmukh, advocate for the applicants
Mr. A.K. Gawali, advocate for respondent
.....

CORAM : V. K. JADHAV, J.
DATED : 7th OCTOBER, 2016

PER COURT:-

1. In both these criminal applications, the learned counsel for the applicants restrict his submissions to the extent that Vth Adhoc Additional Sessions Judge, Ahmednagar has declined to decide the revision on merits in view of the ratio laid down by Apex Court in the case of ***Adalat Prasad vs. Rooplal Jindal, reported in 2004 (4) Mh.L.J. 274.*** Learned counsel submits that it is now well settled that the revision against the order of issue process is maintainable before

the Sessions Court and there is no bar as such to entertain said revision.

2. Brief facts, giving rise to the present criminal applications are as follows:-

The respondent original complainant filed a private complaint bearing R.T.C. No. 45 of 2003 before the J.M.F.C. Rahuri against the applicants herein for having committed offences punishable under Sections 494, 109 r.w. 34 of I.P.C. On the basis of verification statement of the complainant, the learned Magistrate issued process against the applicants, who are 34 in numbers, for the offences punishable under Sections 494, 109 r.w. 34 of I.P.C. Being aggrieved by the same, except original accused Nos. 1 and 2, the other accused persons preferred criminal revision No. 300 of 2003. The learned Additional Sessions Judge, Ahmednagar by judgment and order dated 15.10.2004 dismissed the said revision solely on the ground that revision is not maintainable.

3. Learned counsel for the applicants submits that the issue of maintainability of revision against the order of issue of process is now well settled and the revision application is maintainable before the Sessions Court against the order of issuance of process. Learned

counsel in order to substantiate his submissions, places reliance on the judgment of this Court in the case of ***Sharad Vasant Sawant vs. Ashok Laxman Patel and Ors., reported in 2011 BCI 12.*** Learned counsel submits that in view of observations made by this Court in the above cited case, the judgment and order passed by the Adhoc Additional Sessions Judge, Ahmednagar in criminal revision No. 300 of 2003 is liable to be quashed and set aside and the matter needs to be remanded back to the learned Sessions Judge, with directions to decide the same afresh, on its own merits, in accordance with law.

4. Learned counsel for the respondent original complainant has also not disputed this legal position.

5. In the case of ***Sharad Vasant Sawant (supra)***, relied upon by learned counsel for the applicants, this court in para 10 of the judgment has referred the decision of Supreme court in the case of ***Dhariwal Tobacco Products Ltd. and Others vs. State of Maharashtra and another, reported in (2009) 2 S.C.C. 370*** and held that revision against the order of issuance of process is maintainable. This Court in para 10 and 11 of the judgment has made the following observations:-

“ 10. A reference may also be made to another decision of the Apex

Court on the subject i.e. the decision in Dhariwal Tobacco Products Ltd. and Others Versus State of Maharashtra and anr. reported in (2009) 2 S.C.C. Page 370 in which it has been in terms observed "Indisputably issuance of summons is not an interlocutory order within the meaning of section 397 of the Code". The Apex Court in the case was considering the scope of the exercise of power of the High Court u/s. 482 of Code of Criminal Procedure. The specific question involved was whether an application u/s. 482 of Code of Criminal Procedure can be dismissed only on the premise that an alternative remedy for filing an application u/s. 397 of the code is available. The appellant before the Apex Court had challenged the order of issuance of process by the Magistrate by invoking jurisdiction u/s. 482 of Code of Criminal Procedure. That application was dismissed by the High Court on the ground that a recourse could be taken by the appellant to the remedy of filing a revision application u/s. 397 of Code of Criminal Procedure. The Apex Court held that indisputably issuance of summons is not an "interlocutory order" within the meaning of section 397 of the Code. But only because a revision application is maintainable the same by itself would not constitute a bar from entertaining an application under section 482 of Code of Criminal Procedure.

11. In view of the two decisions of the Apex Court there can be no doubt as regards maintainability of a revision against the order of issuance of process. Therefore, I find no merit in the first contention raised on behalf of the petitioner."

6. In the facts and circumstances of the present case and in view of aforesaid legal provisions, the judgment and order passed by Adhoc Additional Sessions Judge-2, Ahmednagar dated 15.10.2004, in criminal revision application No. 300 of 2003, is not sustainable

and the same is thus liable to be quashed and set side. The matter needs to be remanded to the Sessions Court for disposal of the same in accordance with law, on its own merits. Hence, I proceed to pass the following order:-

O R D E R

- I. Both the criminal applications are hereby partly allowed.
- II. The judgment and order passed by Vth Adhoc Additional Sessions Judge, Ahmednagar in criminal Revision No. 300 of 2003 is hereby quashed and set aside. The matter is remanded to the Sessions Court, Ahmednagar with following directions:-

“a) The learned Sessions Judge, Ahmednagar shall dispose of criminal revision application No. 300 of 2003 on its own merits, in accordance with law, within six months from the date of this order, after giving an opportunity of being heard to both the parties.

b) The Parties shall appear in person or through their counsel, before the revisional court on 7.11.2016.”

- III. Both the criminal applications are accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)