

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 639 OF 2015

SHIVAJI S/O BABURAO BARGAJE & ORS
VERSUS
THE STATE OF MAHARASHTRA & ORS

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Advocate for Petitioner : Shri Jadhavar Pratap V.

APP for Respondent 1 : Shri S.G.Karlekar.

Advocate for Respondent 2 : Shri S.R.Kedar.

Advocate for Respondent 3 : Shri V.C.Solshe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th June, 2016

Per Court:

1 I have heard the learned Advocates for the respective sides and have gone through the impugned order dated 12.09.2014 passed by the learned Additional Sessions Judge, Bhoom in Criminal Revision Application No.69/2014.

2 It is not in dispute that the Petitioners, upon being aggrieved by the order dated 03.07.2013 passed by the learned Magistrate by which the process was issued against the Petitioners and Respondent No.3 (accused Nos.1 to 4) for the offences under Sections 420, 465 r/w 34 of the Indian Penal Code, have preferred Criminal Revision Application

No.69/2014. By the impugned order dated 12.09.2014 the said revision petition is dismissed and the order of the learned Magistrate is sustained.

3 I find from the impugned order, record available and the submissions of the learned Advocates, that after the revision was registered in 2014, the learned Advocates representing the litigating sides were not present before the Revisional Court on 12.09.2014. The learned Revisional Court invoked its powers under Section 403 of the Code of Criminal Procedure and dismissed the revision petition by the impugned order which bears out only one paragraph.

4 Section 403 of the Code of Criminal Procedure reads as under:-

“403. Option of Court to hear parties:- Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.”

5 It appears that the learned Additional Sessions Judge believed that unless it was expressly provided by the Code, no party has any right to be heard either personally or by a pleader before exercising its powers of revision and only if the Court is inclined to hear the parties, it may do

so.

6 I find that the revision petition was neither stale nor was pending for years together before the learned Court. If the learned Advocates were not present on 12.09.2014, the Revisional Court could have adjourned the matter to any other date as per its convenience and could have heard the learned Advocates, considering that the revision was lodged in 2014 itself.

7 Notwithstanding the above, even if the learned Court desired to decide the revision by itself, merely stating that it has gone through the record and proceedings and finds the impugned order legal, is not enough. A reference to the record and proceedings does not suffice the purpose of filing the revision petition. The order of the Revisional Court must contain reasons and while considering the record and proceedings, though it is not expected that the Revisional Court should go through the evidence threadbare, in a matter wherein the process has been issued, it should have at least considered the material available at the prima facie stage and conclude as to whether, the order of the learned Magistrate could be justified or could be termed as being perverse or erroneous.

8 It is only on account of the impugned order being an

unreasoned order and thereby, not indicating the application of mind that I am interfering in the impugned order.

9 As such, this Criminal Writ Petition is partly allowed. The impugned order dated 12.09.2014 stands quashed and set aside.

10 The learned Advocates for the Petitioners and the Respondents jointly submit that they would appear before the learned Additional Sessions Judge, Bhoom, District Osmanabad on 08.07.2016 and would refrain from seeking adjournments on unreasonable and trivial grounds. As such, the litigating sides shall appear on 08.07.2016 and separate notices need not be issued by the Revisional Court.

11 Needless to state, the Revisional Court shall hear the litigating sides on Criminal Revision Petition No.69/2014 and decide the same as expeditiously as possible and preferably on or before 27.10.2016 by delivering a judgment with reasons.

kps

(RAVINDRA V. GHUGE, J.)