

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

CRIMINAL WRIT PETITION NO.709 OF 2014

Mayur Ashok Jaiswal
Age 32 years, Occu. Business,
R/o Jubilee Park, Aurangabad,
District Aurangabad

... PETITIONER
(Orig. Complainant)

VERSUS

1. Suryabhan s/o Fakirchand Rithe,
Age 48 years, Occu. Agriculture,
R/o Dhangar Galli, Chikalthana,
Aurangabad, District Aurangabad

2. Tarabai w/o Suryabhan Rithe,
Age 35 years, Occu. Household,
R/o Dhangar Galli, Chikalthana,
Aurangabad, District Aurangabad

... RESPONDENTS
(Orig. Accused)

.....

Shri H.A. Joshi, Advocate for petitioner
Ms Shubhangi D. More, Advocate for respondents

.....

CORAM: A.I.S. CHEEMA, J.

DATED: 20th July, 2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. It is stated that the criminal trial was pending in the trial Court bearing S.C.C. No.1096/2013, in which summons were

issued, but the trial Court, on 11.4.2014, suddenly closed the proceedings observing that, in spite of issuing summons on various occasions, the same had not been served. The trial was under Sections 447, 504, 506 read with Section 34 of the Indian Penal Code. According to the petitioner (original complainant), the trial Court thus discharged the accused, proceeding under Section 258 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short). It is stated that, it was duty of the trial Court to secure presence of the accused, and the trial Court should have verified as to what happened to the summons issued and if required warrants should have been issued.

3. The learned counsel for the respondents - original accused submits that, the order passed by the trial Court is correct and proper. She further refers to the judgment in the matter of **Marotrao Ganpatrao Jadhav Vs. The State & anr.** reported in **1960 BCI 66** to submit that, the petitioner (original complainant) should have filed revision against impugned order and this Writ Petition may not be entertained.

4. I have gone through the Exhibit A, the final report, on which the trial Court has passed orders. The order reads as under :

"In the present proceeding, the summons was issued against the accused on several occasions since filing of charge sheet. However, the service of same has not been made yet. Hence, the present proceeding is hereby stopped under Section 258 of the Code of Criminal Procedure. In the result, the accused shall stand discharged of the offences, as alleged and the present proceeding shall stand disposed of. The muddemal be destroyed after expiry of appeal period."

5. The copy of roznama is also available. It appears from the roznama that, on multiple dates it was mentioned that summons be issued to the accused. At some place, it is mentioned that the summons has been issued. The roznama does not show any endorsement of "*Kamgiri*", which is made by the staff of the trial Courts in the margin. Whenever in consequence to the directions recorded in the roznama actually summons is issued, the staff enters the fact in the margin. No such endorsement appears in the copy of roznama as available in this matter. For a moment even if it is accepted that actually summons were issued and the entry in the roznama was not made, still there is no material available from the roznama to show that the trial Court at any time checked from the Police Station attached to it as to why the summons issued has not come back or what has happened to the summons which were issued and why service was not successful. There is no material to show that the trial Court gave any directions to the A.P.P. to

take the summons and ensure service or take bailable warrants in the matter. The roznama simply shows multiple endorsements of either- summons be issued, or that, summons has been issued, and on one fine day suddenly order is passed below Exh.1, and resorting to Section 258 of the Cr.P.C. and the proceeding is stopped.

6. If the record was to show that the trial Court made the necessary efforts and the police machinery or the State are not co-operating, it would be a different case. But here there is no material to show that actually summons were issued and the State did not co-operate.

7. No doubt against the order concerned revision can be maintained. However, it does not mean that the present Writ Petition is not maintainable. It is surprising to see how the respondents - accused, who were not available in the trial Court, suddenly got served in the Writ Petition and are now available to oppose the Writ Petition.

8. In the interest of justice, I find that the impugned order as has been passed by the trial Court needs to be quashed and set aside as it is not maintainable.

9. For above reasons, the Criminal Writ Petition is allowed. The impugned order dated 11.4.2014 is quashed and set aside. The Summary Criminal Case No.1096/2013 is restored to the file of 3rd Judicial Magistrate, First Class, Aurangabad. The parties shall appear before the trial Court on 5th August 2016. In case the present respondents - original accused do not appear before the trial Court, the trial Court may take coercive steps to secure their presence.

10. Rule made absolute in above terms.

(A.I.S. CHEEMA, J.)

fmp/cwp709.14