

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

CRIMINAL APPLICATION NO. 4061 OF 2016

SURESH S/O DAMODHAR KHANDVE AND OTHERS
VERSUS
PRATIBHA W/O AMOL KHANDVE

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Advocate for Applicants : Mr Surve Hemant
Advocate for Respondent : Mr V G Sakolkar

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CORAM : V.K. JADHAV, J.

Dated: August 02, 2016

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PER COURT :-

1. Heard.
2. Respondent/original complainant has lodged a complaint which was registered as Regular Criminal Case No.1695 of 2015 before the learned Judicial Magistrate First Class, Aurangabad against the present applicants and 25 others for the offence punishable under sections 494 read with section 109, 323, 504, 506 of the Indian Penal Code. The learned Magistrate by order dated 16.9.2015 issued process against the applicants and other accused persons for the offences punishable under sections 494, 323, 109, 504 and 504 read with section 34 of the Indian Penal Code. Being aggrieved by the same, all the accused persons

approached the Sessions Court by filing Criminal Revision Application No.263/2015. In the said revision petition, the revision petitioners including the present applicants moved an application at Exh.4 and prayed therein for staying the effect of the impugned order. Accordingly, the learned Additional Sessions Judge, Aurangabad by order dated 2.12.2015 passed below Exh.4 stayed the order of N.B.W. passed by the learned Magistrate against the present applicants and other accused persons till the next date. The case was thereafter posted on 31.12.2015. However, said order was not extended thereafter. On 20.4.2016 the respondents appeared in the revision application and filed the say to the application at Exh.4. Thereafter, the learned Additional Sessions Judge, Aurangabad has vacated the stay order by order dated 20.4.2016.

3. It appears from the order passed on 2.12.2015 that the order of N.B.W. passed against present applicants and other accused persons came to be stayed till the next date. After filing of the say by the respondent/original complainant, the learned Additional

Sessions Judge, Aurangabad should have heard both the sides on the application at Exh.4, instead of that the learned Additional Sessions Judge, Aurangabad passed the order dated 20.4.2016s vacating the stay granted earlier. It further appears that, thereafter, present applicants and other accused persons have filed an application at Exh.7 and the same is also rejected by the Additional Sessions Judge, Aurangabad by order dated 18.7.2016 which is impugned in the present application.

4. I do not think that the order passed below Exh.7 dated 18.7.2016 is sustainable. The learned Additional Sessions Judge, Aurangabad should have given an opportunity of being heard to both the sides on the application at Exh.4 and decided the said application on merits. In view of this, I proceed to pass the following order.

O R D E R

- I. The order dated 20.04.2016 passed below Exh.4 by the learned Additional Sessions Judge-5, Aurangabad, and the order dated 18.7.2016 passed below Exh.7 by the learned

Additional Sessions Judge, Aurangabad in Criminal Revision Application No.263 of 2015 are hereby quashed and set aside.

II. The learned Additional Sessions Judge, Aurangabad is hereby directed to decide the application at Exh.4 on its own merits. Till then, the order passed by the learned Judicial Magistrate First Class, Court No.9, Aurangabad issuing Non Bailable Warrant against the present applicants is stayed.

III. Criminal Application is accordingly disposed of.

(V.K. JADHAV, J.)

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