

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

CRIMINAL APPLICATION NO. 6198 OF 2015

DATTU @ DATTA S/O ASHRUBA NAIKWADE
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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Advocate for Applicant : Mr A N Nagargoje
APP for Respondents: Miss R P Gour

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CORAM : V.K. JADHAV, J.

Dated: August 22, 2016

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PER COURT :-

1. Being aggrieved by the order passed by the Judicial Magistrate First Class, Wadwani dated 10.4.2015 below Exh.1 in Summary Criminal Case No.64/2010, the applicant-original complainant has filed present application.

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

On the basis of the complaint lodged by the present applicant, Crime No.153/2010 came to be registered against accused persons at Police Station Dindrud for the offences punishable under section 279, 338 of the Indian Penal Code on 22.10.2008. After due

investigation in the crime, police submitted charge sheet against accused on 26.4.2010. It is a part of the record that police and prosecution failed to secure the presence of the accused. The learned Judicial Magistrate First Class, Wadwani, therefore, by impugned order dated 10.04.2015 stopped the proceedings by invoking the powers provided under section 258 of the Criminal Procedure Code and discharged the accused accordingly. Hence, this Criminal Application.

3. The learned counsel for the applicant submits that, the Magistrate has observed in the impugned order that the case being a Summary Criminal Case should have been concluded within a short period. The learned Magistrate has further observed that prosecution could not secure even presence of the accused and number of times summons, Bailable Warrant and Non Bailable Warrant came to be issued for securing the presence of the accused. The learned Magistrate has further observed that, concerned police showed their reluctance even for filing the report as the police machinery was unable to serve the summons due to other duties

concerned with law and order. Learned counsel submits that, the Magistrate has not followed mandatory provisions of section 82 of the Criminal Procedure Code nor forfeited the Bond executed by the accused as well as his surety bond. Learned counsel submits that in view of certain directions given by the High Court for arranging Special Drive for invoking the powers of Section 256 and 258 of Criminal Procedure Code, the learned Magistrate has hastily passed the said order.

4. I have also heard the learned APP for the State.

5. It is well settled that, powers given to the Magistrate under section 258 of the Criminal Procedure Code to stop the proceedings at any stage would have to be used cautiously and that too in exceptional or unusual circumstances. In absence of the special or unusual circumstances, the Magistrate cannot invoke said powers and stop the further proceedings in the case. In the case in hand, the learned Magistrate has issued NBW against accused for securing his presence in the case. It further appears from the record that,

even the learned Magistrate has issued notice to the surety, however, it further appears from the impugned order that, the Magistrate has not taken pains to follow the procedure as prescribed under section 82 and onwards of Criminal Procedure Code. Furthermore, no reference is given in the impugned order about forfeiture of the Bond of the accused. It does not reflect from the order passed by the Magistrate that surety has been called upon to pay the penalty by issuing a show cause notice as contemplated under section 446 of the Criminal Procedure Code. In absence of the same, I do not think that there are special or unusual circumstances which makes it difficult or impossible for the Magistrate to proceed with the case. Had there been a proclamation as provided under section 82 of the Criminal Procedure Code and attachment of the property of the accused as provided under section 83 of the Criminal Procedure Code, presence of the accused could have been secured in the case. Furthermore, in absence of any steps as provided under section 446 of Criminal Procedure Code, I do not find any unusual or special circumstance exists for invoking the powers

under section 258 of the Criminal Procedure Code. In view of this, I proceed to pass the following order.

O R D E R

- I. Criminal Application is hereby allowed.
- II. The order dated 10.4.2015 passed by the Judicial Magistrate First Class, Wadwani in Summary Criminal Case No.64/2010 is hereby quashed and set aside.
- III. Summary Criminal Case No.64/2010 State Vs. Dattatraya be restored to its original position.
- IV. The Magistrate shall take appropriate steps to secure the presence of the accused in the case.
- V. Criminal Application is accordingly disposed off.

(V.K. JADHAV, J.)

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