

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

CRIMINAL WRIT PETITION NO. 1607 OF 2015

DEVAJI S/O AMBU PATIL
VERSUS
SHESHRAO S/O RAMRAO MIRGE

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Advocate for Petitioner : Mr R G Joshi
Advocate for Respondent : Mr A S Sonwane

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CORAM : V.K. JADHAV, J.

Dated: October 15, 2016

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PER COURT :-

1. Heard finally with the consent of the parties at admission stage.
2. Being aggrieved by the Judgment and Order passed by the Additional Sessions Judge-4, Aurangabad dated 17.4.2015 in Criminal Revision Application No.44/2012, the petitioner-original complainant preferred this criminal writ petition.
3. Brief facts, giving rise to the present writ petition are as follows :-

The petitioner-original complainant has filed Criminal Misc. Application No.63/2012 before the Judicial Magistrate First Class, Sillod against the

respondent-accused for having committed an offence punishable under section 420 of the Indian Penal Code. The petitioner-complainant has prayed in the said application that the police may be directed to carry out investigation as provided under section 156 (3) of the Code of Criminal Procedure by registering the crime on the basis of the allegations made in the said criminal application. The learned Judicial Magistrate First Class, Sillod by order dated 4.2.2012 rejected the said application. Being aggrieved by the same, the petitioner-original complainant preferred the aforesaid criminal revision application No.44/2012 and the learned Additional Sessions Judge-4, Aurangabad by its impugned judgment and order dated 17.4.2015 dismissed the revision. Hence, this Criminal Writ Petition.

4. The learned counsel for the petitioner-original complainant submits that in paragraph no.11 of the impugned judgment the learned Additional Sessions Judge observed that the order of the Magistrate is purely an interlocutory order. The learned Additional Sessions Judge has further observed that said

proceeding has not come to an end when learned Magistrate refused to issue directions to hold investigation under section 156 (3) of the Code of Criminal Procedure. Even, the learned Additional Sessions Judge has further observed in the said paragraph that, naturally the matter required to be posted for recording statement on oath of complainant under section 200 of the Code of Criminal Procedure and it is required to be posted for recording statement of complainant on oath. Learned Additional Sessions Judge in concluding paragraph no.12 of the Judgment held that the impugned order of the learned Magistrate being an interlocutory order, is not a revisable order and dismissed the revision petition as not maintainable. Learned counsel submits that, the Additional Sessions Judge has not taken a note of the order passed by the Magistrate wherein the Magistrate has rejected the Criminal M.A. No.63/2012 in toto. The learned Additional Sessions Judge has not considered the ground no.3 of the criminal revision application filed before the Additional Sessions Judge in the aforesaid revision that the learned Magistrate has not recorded

verification statement of the complainant nor given him an opportunity to lead an evidence to substantiate the allegations made in the complaint. The learned counsel submits that, instead of remanding the matter to the Magistrate, the learned Additional Sessions Judge has erroneously dismissed the revision.

5. Learned counsel for respondent-original accused submits that the Additional Sessions Judge in the impugned judgment and order also considered the merits of the case and in paragraph no.11 of the judgment observed additional ground for dismissal of the said revision. No interference is required. Criminal Writ Petition is liable to be dismissed.

6. On careful perusal of the order passed by the Magistrate dated 4.2.2012, it appears that, the learned Magistrate has observed that there is no need for directing investigation and accordingly rejected the application. The learned Additional Sessions Judge, however, in the impugned judgment and order passed in the Criminal Revision Application no.44/2012 especially

in paragraph no.11 of the judgment observed that, *order passed by the Magistrate is purely an interlocutory order.*

The learned Additional Sessions judge has made such an observations for the reason that if the learned Magistrate refused to issue such directions, then, the matter required to be decided for recording statement of the complainant on oath under section 200 of the Criminal Procedure Code. Even, though petitioner-original complainant has raised a specific ground in his revision application that Magistrate has not given him an opportunity to lead the evidence nor recorded his verification statement, the learned Additional Sessions Judge has not considered the same. The learned Magistrate has rejected the Criminal M.A.No.63/2012 in toto without giving any further directions to the complainant to examine himself on oath to substantiate the allegations made in the complaint. It, thus, appears that the learned Additional Sessions Judge has erroneously observed that the order of the learned Magistrate is purely an interlocutory order. In the light of the observations made in paragraph no.11 of the Judgment, the learned Additional Sessions Judge,

Aurangabad ought to have remanded the matter to the Magistrate, however, instead of that, dismissed the revision. In view of the same, this Court left with the no other alternative but to remand the matter to the learned Additional Sessions Judge, Aurangabad with a direction to dispose of the Criminal Revision Application No.44/2012 afresh by giving an opportunity of being heard to both the parties. Hence, order.

ORDER

- I. Criminal Writ Petition is hereby partly allowed.
- II. The Judgment and Order dated 17.4.2015 passed by the Additional Sessions Judge-4, Aurangabad in Criminal Revision Application No.44/2012 is hereby quashed and set aside.
- III. Criminal Revision Application No.44/2012 is hereby restored to its original number with a direction that the Additional Sessions Judge, Aurangabad shall dispose off the same afresh by giving an opportunity of being heard to both the parties.
- IV. Criminal Writ Petition is accordingly disposed of.

(V.K. JADHAV, J.)

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