

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 41 OF 2013**

Satish Devkinandan Kanodia	...Petitioner
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Satyam R. Dube for the Petitioner

Ms. P. P. Shinde, A.P.P for the Respondent No 1-State

Mr. K. H. Giri for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 8th SEPTEMBER, 2016

P.C. :

1. Heard learned Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Learned A.P.P waives notice for the respondent No.1-State. Mr. Giri waives notice for the respondent No. 2.

3. Petition is taken up for final disposal forthwith, by consent.

4. By this petition, the petitioner has impugned the order dated 26th November, 2012 passed by the learned Sessions Judge in Criminal Revision Application No. 531 of 2011 by which respondent No. 2 herein i.e. S. P. Dash came to be discharged.

5. Learned Counsel for the petitioner submits that the revision came to be dismissed qua respondent No. 2 only on the ground, that the respondent No. 2 was not served with a notice by the petitioner, despite the direction given by the Court on 15th December, 2011, directing the petitioner to file a service affidavit by 2nd February, 2012. Learned Counsel for the petitioner submits that a perusal of the Roznama which is on page 46 of the petition shows that on 4th May, 2012, it is recorded by the learned Judge that all respondents are served. He submitted that in these circumstances, learned Judge was not justified in dismissing the revision qua respondent No. 2.

6. Learned Counsel for the respondent No. 2 opposed the grant of any relief. He submitted that the petitioner had not filed an affidavit as was directed by the learned Judge.

7. Perused the papers. It appears that pursuant to an FIR filed by the petitioner, C.R. No. 82 of 2005 (EOW C.R. No. 37 of 2005) came to be registered on 8th April, 2005. After investigation, charge-sheet was filed in the Court of the learned Magistrate and the accused were released on bail. Thereafter, the respondent No. 2 and other co-accused filed applications seeking their discharge from the said case. The said applications were filed before the learned Additional Chief Metropolitan Magistrate's 19th Court. Esplanade, Mumbai, under Section 239 of the Cr. P. C. In the said application, the State of Maharashtra through GB CB CID, Mumbai, filed their reply praying therein, for rejection of the applications filed by the respondent No. 2 and other co-accused. It appears that the learned Additional Chief Metropolitan Magistrate after hearing the parties, was pleased to discharge the respondent No. 2 and other co-accused vide order dated 15th February, 2011. Being aggrieved by the said order of discharge, the petitioner (original complainant) filed a revision application being Revision Application No. 531 of 2012 in the Sessions Court. The learned Sessions Judge was pleased to issue notice to the respondent No. 2 and another co-accused. It appears that the petitioner was directed to serve

notice on the respondent No. 2 and another co-accused at his cost and notice was made returnable on 17th June, 2011. Thereafter, the matter was adjourned from time to time. On 23rd August, 2011, the petitioner herein was directed to file a service affidavit and the matter was adjourned. On 15th December, 2011, it is recorded in the Roznama that the petitioner was to submit an affidavit of service alongwith an acknowledgment of notice to the respondent No. 2 and other co-accused. However, the applicant had failed to comply with the same. It was observed that the Court may dismiss the application against respondent Nos. 2 and 4, however, the order was deferred till the next date. In the Roznama of 1st May, 2012, it is mentioned that all respondents are served and accordingly, the matter was adjourned to 29th June, 2012. Thereafter, the matter was again adjourned from time to time. On 26th November, 2012, the learned Judge was pleased to pass the following order:

“Respondent No. 2 is not served with notice by applicant though direction was given on 15/12/2011, to file service affidavit till 2/2/2012.

Respondent No. 4 apposed in the proceeding.

Hence Revision stands dismissed against Respondent No. 2.”

8. It appears that there is some substance in what is urged by the learned Counsel for the petitioner that it was recorded in the roznama dated 1st May, 2012, that all the respondents have been served, although the same is refuted by the respondent No. 2. Considering that it was a police case, it was always open for the learned Judge to have heard the learned prosecutor, instead of dismissing the matter on technical grounds.

9. Be that as it may, considering the aforesaid facts and circumstances in which the Revision was dismissed qua respondent No. 2, the petitioner ought to be given an opportunity of being heard. Accordingly, the impugned order dated 26th November, 2012 passed by the learned Sessions Judge in Revision Application No. 531 of 2011 is quashed and set-aside. The revision which is dismissed qua respondent No. 2 is restored back to its original file. The learned Judge to decide the said revision as expeditiously as possible after hearing all the sides. All parties including the respondent No. 2 to appear before the learned Sessions Judge on 3rd October, 2016 at 11:00 a.m. alongwith a copy of this order, after which, the learned Sessions Judge shall fix a date for hearing the said revision application.

10. The petitioner to serve a copy of the revision application filed by him in the Sessions Court on the Counsel appearing on behalf of the respondent No. 2 within one week from today or on the respondent No. 2 in the Court on 3rd October, 2016.

11. Rule is made absolute on the aforesaid terms.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.