

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 246 OF 2015

Mr. Shashikant Suryakant Gujar

.....Petitioner

V/s.

Mr. Nandlal Dulichand Gupta and another

....Respondents

Mr. Sandesh Shukla a/w Ms. Bhakti A. Sutar i/b Mr.

V. K. Mahangare Advocate for Petitioner.

Mr. H. E. Palwe Advocate for Respondent no. 1.

Mr. V. B. Konde Deshmukh APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 8, 2016.

PC :

Heard respective counsel.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein questions the correctness and the validity of the order dated 20/11/2014 passed by Additional Sessions Judge, Pune thereby dismissing Revision Application filed by the Petitioner challenging the order of discharge passed in favour of Respondent by learned Magistrate vide Order dated 10/04/2014. Learned counsel for the Petitioner submits that present Petitioner happens to be original complainant in R.C.C. No. 208/12 (Old

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R.C.C. No. 199 of 2011). Learned counsel for the Petitioner has drawn the attention of this Court to the Rozanama of the said case. It appears that matter appeared on board on 13/10/2014. Matter was adjourned to 26/11/2014. It also appears that subsequently next date was shown as 06/11/2014. Rozanama further indicates that Petitioner and his Advocate were not present on 06/11/2014 and the matter was adjourned to 13/11/2014.

4) Learned counsel for the Petitioner submits that since the next scheduled date was given behind the back, he had no knowledge that the matter was scheduled on 06/11/2014 or 13/11/2014. The impugned order also indicates that Petitioner and his Advocate did not remain present at the time of hearing of Criminal Revision Application No. 451 of 2014 and in view of this circumstance learned Sessions Judge has observed that Applicant and his Advocate remained absent. They have not pointed out lapses on record and hence, Revision Application was dismissed.

5) Present petitioner happens to be the original complainant who was deprived of an opportunity to present his case in the Revision Application due to fact that Rozanama was not written properly and the next date was changed behind his back. Learned counsel for the Petitioner rightly submits that since

he had no knowledge of the next scheduled date, it cannot be said that he has not prosecuted his case diligently.

6) Taking into consideration the totality of the facts and circumstances of the present case, it would be appropriate in the interest of justice to remand the matter to the Sessions Court and direct the Sessions Court to give an opportunity to the present Petitioner to present his case and make submissions. Complainant/Petitioner deserves a right to be heard by the Revisional Court. In view of this, following order.

ORDER

- (i) Order dated 20/11/2014 passed by Additional Sessions Judge, Pune in Criminal Revision Application No. 451 of 2014 is hereby quashed and set aside.
- (ii) Revision Application is restored to its original status.
- (iii) Both parties shall remain present before the Court within 4 weeks from 14/06/2016 and make application before Sessions Court seeking a date by consent.
- (iv) Learned Sessions Judge shall decide the Revision Application on its own merits, without being influenced by the observation of this

Court.

(v) It is made clear that order dated 20/11/2014 is not being quashed and set aside on merits, but only to give an opportunity to the Petitioner to present his case.

(vi) All contentions are kept open.

(vii) Learned Sessions Judge shall hear the Revision Application on merits in accordance with Law.

(viii) Office to communicate this order to the concerned Court, forthwith.

(ix) Rule made absolute in the above terms.

(x) Writ Petition stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)