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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.839 OF 2016**

|                                  |                |
|----------------------------------|----------------|
| Jayesh Kundanmalji Bagrecha      | ...Petitioner  |
| Versus                           |                |
| Sheetal Jayesh Bagrecha and Ors. | ...Respondents |

Mr.M.M.Agavekar, for the Petitioner.

Mr.P.G.Sarda, for Respondent Nos.1 and 2.

Ms.P.P.Shinde, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.***  
***DATE : 7<sup>th</sup> SEPTEMBER, 2016***

**P.C. :**

1. Heard learned Counsel for the petitioner, learned counsel for respondent nos.1 and 2 and the learned A.P.P.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of Respondent – State. Learned Counsel Mr.Sarda waives notice on behalf of Respondent Nos.1 and 2.

3. By this petition, the petitioner has impugned the Judgment and Order dated 25<sup>th</sup> November, 2015, passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.156 of 2015, by which his Appeal came to be dismissed with costs.

4. Learned Counsel for the petitioner states that the said appeal was not heard on merits and prays that the impugned Judgment and Order dated 25<sup>th</sup> November, 2015, passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.156 of 2015, be quashed and set aside and the Appeal being Criminal Appeal No.156 of 2015 be heard on its own merits.

5. Learned Counsel for the Respondent Nos.1 and 2 states that he has no objection if the impugned Judgment and Order dated 25<sup>th</sup> November, 2015, passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.156 of 2015, is quashed and set aside and the Appeal being Criminal Appeal No.156 of 2015 is heard on its own merits, on the condition, that the petitioner deposits the entire amount which is due and payable till date i.e. Rs.2,60,000/-. He submits that the out of the said

amount of Rs.2,60,000/-, the petitioner has already deposited a sum of Rs.80,000/- in the trial Court and that the balance amount of Rs.1,80,000/- is still to be paid.

6. Learned Counsel for the petitioner, on the instructions of the petitioner, who is present in Court, makes a statement that the petitioner is ready to deposit the balance amount of Rs.1,80,000/- in the trial Court in two installments, i.e. Rs.90,000/- within two weeks from today and Rs.90,000/- within two weeks thereafter, without prejudice to his rights and contentions. The said statement is accepted as an undertaking to this Court.

7. Perused the impugned Judgment and Order dated 25<sup>th</sup> November, 2015, passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.156 of 2015. It appears as is recorded in para 4 of the said order, that despite ample opportunity given to the appellant, i.e. petitioner herein, neither he nor his advocate or counsel were present before the Court and hence the learned Additional Sessions Judge proceeded with the Appeal. It appears that the said Appeal was taken up and has not been considered on merits. The learned Additional Sessions Judge was left with

no option but to proceed with the Appeal and pass the impugned Judgment and Order. However, only in view of the aforesaid statement made by the learned counsel for the petitioner, in the interest of justice and only by way of indulgence, the impugned Judgment and Order dated 25<sup>th</sup> November, 2015, passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.156 of 2015 is quashed and set aside and Criminal Appeal No.156 of 2015 is restored back to its original file, only on the condition, that the petitioner deposits Rs.1,80,000/- within four weeks from today. The learned Additional Sessions Judge to decide the said appeal on merits, after hearing both the sides and after the amount of Rs.1,80,000/- is deposited by the petitioner, in the trial Court, within four weeks from today.

8. Accordingly, the petitioner to deposit the balance amount of Rs.1,80,000/- in the trial Court in two installments, i.e. Rs.90,000/- within two weeks from today; Rs.90,000/- within two weeks thereafter, without prejudice to his rights and contentions.

9. Respondent No.1 is permitted to withdraw the said amount of Rs.1,80,000/-, as and when the same is deposited by the petitioner, in the

Trial Court, on furnishing proof of her identity.

10. It is made clear, that the trial Court shall decide the Appeal on its own merits uninfluenced by the observations made herein.

11. The parties shall appear before the learned Additional Sessions Judge on 17<sup>th</sup> October, 2016, after which, the learned Additional Sessions Judge shall fix a date for hearing of the Appeal, if there is compliance of the deposit of Rs.1,80,000/-.

12. The petitioner to file an undertaking in the Sessions Court, stating therein, that that he or his advocate will appear on every date of the hearing given by the learned Additional Sessions Judge and will not seek unnecessary adjournments and that they will not delay the hearing of the appeal.

13. The petitioner shall continue to pay maintenance to the respondent nos.1 and 2, till the Appeal is finally decided. The said payments shall be made by the petitioner, without prejudice to his rights

and contentions, in the Appeal. All contentions of both the parties are kept open. The learned Judge shall decide the case on its own merits, uninfluenced with the observations and/or directions to the petitioner to deposit the arrears.

14. Rule is made absolute in above terms.

15. In the meantime, parties to explore the possibility of a settlement.

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

**REVATI MOHITE DERE, J.**