

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 855 OF 2015**

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|----|------------------------------|----------------|
| 1. | Anita Dnyaneshwar Bedare, | |
| 2. | Dnyaneshwar Khanderao Bedare | ...Petitioners |
| | Versus | |
| 1. | Satish Dinkar Chormale; | |
| 2. | State of Maharashtra | ...Respondents |

Mr. Pandit Kasar for the Petitioners

Mr. Nikhilesh Pote for the Respondent No. 1

Mr. Avinash Kamkhedkar, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 21st SEPTEMBER, 2016

P.C. :

1. Heard learned Counsel for the petitioners, learned Counsel for the respondent No. 1 and learned A.P.P. for the respondent No. 2-State.

2. By this petition, the petitioners have impugned the order dated 22nd January, 2015 passed by the learned Sessions Judge, Pune in Criminal Revision Application No. 23 of 2015, confirming the order dated 31st January, 2014 passed by the learned Judicial Magistrate First Class, Pune, in CC No. 6462/SS/2010.

3. Learned Counsel for the petitioners submits that after the statements under Section 313 of the petitioners/accused were recorded, the petitioners filed an application, being Exhibit 79 praying therein, for issuance of summons to the Assistant Police Inspector, Chaturshrungi Police Station, by calling for the missing register dated 8th April, 2005. It was stated in the said application that the petitioners (accused) wanted to examine the said witness in support of their case. On the said application, the learned Judge passed an order dated 31st January, 2014 directing the petitioners (accused) to file documentary evidence to show the existence of such a document mentioned in the application. The petitioners were directed to file certified copy of the alleged document. Learned Counsel for the petitioners submitted that after the said order was passed, the petitioners stepped into the witness box and examined themselves as defence witnesses. The petitioners were thereafter cross-examined by the learned Counsel for the respondent No. 1. According to the learned Counsel for the petitioners, being aggrieved by the said order dated 31st January, 2014, the petitioners (accused) filed a revision application in the Court of the learned Sessions Judge, Pune, which was dismissed by the learned Sessions Judge vide order dated 22nd January, 2015, by observing that the learned

Magistrate had not rejected the said application, but had only directed the accused to file documentary evidence to show the existence of the document mentioned in the application.

4. Learned Counsel for the petitioners has tendered on record a certificate dated 8th April, 2005, which shows, that a complaint was lodged by the petitioner No. 1 vide missing register No. 1710 of 2005 with respect to cheque Nos. 748545 to 748560, that the same were lost/misplaced was, being investigated by the Chaturshrungi Police Station, Pune. Learned Counsel submitted that infact, the petitioners had in the cross-examination of the respondent No. 1 (original complainant), laid the foundation, with regard to the lodging of a complaint with the Chaturshrungi Police Station, with respect to the said cheques. He submitted, therefore, in the interest of justice, the petitioners be permitted to examine the Assistant Police Inspector, Chaturshrungi Police station, as his evidence is crucial to their case. Learned Counsel for the petitioners further urged that the said certificate dated 8th April, 2005 was placed on record before the trial Court and it is in these circumstances, that the learned Judge ought to have issued summons as prayed for by the petitioners in Exhibit 79.

5. Learned Counsel for the respondent No. 1 opposed the petition. He submitted that the case is pending for 9 years and that the petitioners are trying to delay the said case. He submitted that under the Right to Information Act, the respondent No. 1 had learnt that the said missing register which is called for, has been destroyed.

6. Perused the papers, in particular, the impugned orders. In the application being Exhibit 79, the petitioners had prayed for issuance of summons to the Assistant Police Inspector, Chaturshrungi Police Station, for calling for the missing register dated 8th April, 2005. The learned trial Court had directed the petitioners/accused to produce the documentary evidence, to show the existence of such a document. The said order does not show whether the application was rejected or was allowed. The evidence shows that the petitioners had laid the foundation in the cross-examination of the respondent No. 1, with regard to the said cheques and the lodging of the complaint with the Chaturshrungi Police Station. Infact, soon after the 313 statement of the petitioners were recorded, the petitioners/ accused immediately filed the aforesaid application, being

Exhibit 79 seeking to summon the Inspector of Police, Chaturshrungi Police Station and thereafter, even stepped into the witness box and examined themselves as defence witnesses. The defence of the petitioners appears to be that the cheques were stolen/lost/misplaced pursuant to which a missing complaint was lodged.

7. Under these circumstances, considering the peculiar facts and circumstances of this case, and in the interest of justice, the petition is allowed and the impugned orders dated 22nd January, 2015 and 31st January, 2014 are quashed and set-aside. Accordingly, the learned trial Court to issue summons to the Assistant Police Inspector, Chaturshrungi Police Station, Pune, as prayed for in Exhibit 79. Needless to say, that the respondent No.1 be given an opportunity of cross-examining the said witness.

8. Considering that the case is 9 years old, the case being CC No. 6492 of 2010 is expedited. The trial Judge shall dispose of the said case as expeditiously as possible and in any event, within three months from the date of receipt of this order.

9. It is made clear, that if the said witness of the petitioners fails to appear before the trial Court, the trial Judge to proceed with the case in accordance with law.

10. All contentions of both the parties are kept open. It is made clear that this order is confined to the orders impugned in the aforesaid petition and the learned Judge shall decide the case on its own merits and uninfluenced by any of the observations made in this order.

11. Petition is disposed of accordingly.

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

REVATI MOHITE DERE, J.