

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 282 OF 2016

M/s. Shree Cements Ltd. and others. ...Applicants.

vs.

State of Maharashtra and anr. ...Respondents.

Mr.M.K.Kocharekar i/by S.D.Kadam for the Applicant.

Mr. A.S.Patil, APP. for the State.

Mr.Shyamrishi Pathak for Respondent No.2.

**CORAM : A.S.GADKARI, J.**

**DATE : 26<sup>th</sup> July, 2016**

P.C.

The applicants are the original accused Nos. 5 to 9 in CC No.1020/Misc/2015 filed by respondent No.2 in the Court of Metropolitan Magistrate, 62<sup>nd</sup> Court, Bhoiwada, Mumbai under Section 420 and 406 read with 120(B) of the Indian Penal Code, have challenged the Judgment and order dated 24.2.2016 passed by the learned Judge of City Civil and Sessions Court, Greater Mumbai in Criminal Revision Application No.42 of 2016, allowing the said revision preferred by respondent No.2-original complainant thereby setting aside the order dated 23.12.2015 passed by the learned Magistrate and remanded the matter back to the Trial Court for its fresh consideration with directions to consider the pleadings of the complainant before passing any order is under challenge at the instance of original accused Nos. 5 to 9 in the present application under Section 482 of the Code of Criminal Procedure.

2) Heard the learned counsel for the applicant and the learned counsel for respondent No.2 and also perused the record

annexed to the application.

The record reveals that respondent No.2-original complainant has filed the aforesaid complainant in the Court of Metropolitan Magistrate, Bhoiwada, Mumbai. The learned Metropolitan Magistrate on 23.12.2015 passed the following order.

“Complainant absent, his Advocate present. Order is passed on Exhibit-1. Case adjourned for verification”.

3) Respondent No.2 original complainant feeling aggrieved by the said order preferred Criminal Revision Application No.42/2016 in the Court of Sessions, Greater Mumbai at Mumbai predominantly on the ground that the learned Magistrate without issuing an order under Section 156(3) of the Cr.P.C. has placed the said complaint for recording verification of the complainant. The learned Judge of the Revisional Court in the impugned order dated 24.2.2016 has held that, it is difficult to ascertain from the said order dated 23.12.2015, that the learned Metropolitan Magistrate has gone through the complaint and the facts on record and the learned Metropolitan Magistrate has not considered the citations submitted by the learned Advocate for the complainant. The Revisional Court therefore, recorded a finding that in view of the said fact the said order of keeping the matter for recording of verification cannot be said to be the order in the eyes of law and also cannot be said that the said order is interlocutory in nature. The learned counsel appearing for the applicant submitted that the order dated 23.12.2015 passed by the learned Magistrate is an interlocutory order and therefore, the Revision Application filed before the Sessions Court is not maintainable.

The said order dated 23.12.2015 passed by the Magistrate, thereby placing a complaint for verification is an interlocutory order. The term “interlocutory order” has been defined by the Supreme Court in a catena of decisions. In view of the same, it is to be mentioned that the order dated 23.12.2015 is an interlocutory order and therefore, in my view, the Revision Application No.42/2016 was not maintainable in the eyes of law and particularly, in view of Section 397(2) of the Code of Criminal Procedure. As the revision was not maintainable in law the impugned order dated 24.2.2016 is hereby quashed and set aside.

4) As far as order dated 23.12.2015 passed by the Metropolitan Magistrate is concerned, the learned counsel for respondent No.2 submitted that even if it is held that he was no remedy to file revision under Section 397 of the Cr.P.C. his remedy as contemplated under Section 482 of the Cr.P.C. and/or Article 227 of the Constitution of India cannot be curtailed by the orders of this Court in the present proceeding. Mr. Kocharekar, learned counsel for the respondent opposed the said contention and submitted that the applicant has already availed the said remedy though incorrectly and therefore, he cannot be permitted to avail the said liberty, to further pursue it under the law.

It is made clear here that if the respondent No.2 intends to question the correctness of the order dated 23.12.2015 passed by the learned Magistrate in CC NO.1020/Misc/2014 he is at liberty to pursue the remedy if available in law.

Application is allowed in the aforesaid terms.

**(A.S. GADKARI, J.)**