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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 311 OF 2016

Yogesh Pramiod Virarkar

..Applicant

Vs.

Mrs. Jayshree Sanjay Savardekar & Anr.

..Respondents.

Mr. S.V. Kotwal ai/b Mr. Amol Patankar for Applicant.

Mr. Sachin Kankal for respondent No.1.

Ms. G.P. Mulekar, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 8th August 2016.

P.C.

1 By the present application under Section 482 of Cr. P.C., the applicant, original accused in Criminal Case No.1775 of 2010 filed by the respondent No.1 in the Court of Judicial Magistrate First Class, Vasai under Sections 352 and 506 of the Indian Penal Code, has challenged the Judgment and Order dated 30th July 2015 passed by the Additional Sessions Judge, Vasai in Criminal Revision Application No.8 of 2015 allowing the

said Revision and quashed and set aside the Order dated 30.10.2014 passed by the Judicial Magistrate First Class, Vasai in SCC No.1775 of 2010.

2 The record reveals that the respondent No.1 has filed a complaint in the Court of Judicial Magistrate First Class, Vasai bearing No.1775 of 2010 under Sections 352 and 506 of the Indian Penal Code. The learned Magistrate after recording the verification of the respondent No.1, passed an Order directing the police to submit a report under Section 202 of Cr. P.C. That the Police submitted a report under section 202 of Cr. P.C. dated 22.8.2014. In the said report it is stated that no case is made out by the applicant. The Trial Court after hearing the applicant, verifying the complaint and report under Section 202 submitted by the police, was pleased to dismiss the said complaint under Section 203 of Cr. P.C. by its Order dated 30.10.2014. The respondent No.1 preferred a Criminal Revision Application bearing No.8 of 2015 in the Court of the Additional Sessions Judge, Vasai. The learned Additional Sessions Judge, Vasai by its Judgment and Order dated 30th July 2015 allowed the said application and directed the Magistrate to issue process against the applicant under Section 504 and 506 of the Indian Penal Code.

3 The learned counsel for the applicant submitted that as a matter of fact the applicant was not heard before passing the impugned

Judgment and Order dated 30.7.2015. He submitted that it was incumbent on the part of the learned Judge of the Revisional Court before reversing the finding of the Magistrate to hear the applicant. In support of this contention he relied upon the decision of the Supreme Court in the case of **Manharibhai Muljibhai Kakadia & Anr. Vs. Shaileshbhai Mohanbhai Patel & Ors. reported in (2012) 10 SCC 517**. He therefore submitted that the present application may be allowed and the Revision Application may be remanded to the Trial Court for hearing afresh.

The learned counsel for the respondent No.1 opposed the present application and submitted that the present application filed under section 482 of Cr. P.C. is not maintainable and the applicant ought to have filed Criminal Writ Petition under Article 227 of the Constitution of India. He further submitted that it is not necessary for the Revisional Court to hear the applicant before passing the impugned Judgment and Order though it was a mandate of the Supreme Court in the aforestated decision. The said submissions of the learned counsel for the respondent No.1 are recorded for its rejection at its threshold as these submissions does not have any substance in it.

4 The Supreme Court in its decision in the case of Manharibhai Muljibhai Kakadia & Anr. (supra) has in unequivocal terms held that

when the Revision is filed by the complainant against dismissal under Section 203 of Cr. P.C., an opportunity of hearing to the accused/suspect is necessary. In view of the ratio laid down by the Supreme court in Manharibhai Muljibhai Kakadia & Anr.(supra), a bare perusal of the record reveals that in the Revision preferred by the respondent No.1, the learned Revisional Court was pleased to issue notice to the Opponent No.1/Respondent No.1 therein i.e. the State of Maharashtra only. The impugned Judgment and Order further reveals that the learned Revisional Court heard only respondent No.1 therein i.e. the learned APP for the State. In the said Revision, the applicant herein was not granted an opportunity of being heard. This ground alone is sufficient to set aside the impugned Judgment and Order dated 30.7.2015 passed by the Additional Sessions Judge, Vasai in Criminal Revision Application No.8 of 2015.

5 In the result, the impugned Judgment and Order dated 30th July 2015 passed by the learned Additional Sessions Judge, Vasai in Criminal Revision Application No.8 of 2015 is hereby quashed and set aside. The learned Additional Sessions Judge, Vasai is hereby directed to

hear the said Revision Application afresh after giving due notice to the applicant herein.

6 Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)