

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
REFERENCE NO.1 OF 2015

High Court on its own motion ...Petitioner
vs.
Rajesh Pradhan and Ors. ...Respondents

Dr.F.R.Shaikh, APP for the State
None for the respondent

CORAM : A.S.OKA, &
 P.D.NAIK, JJ.
DATE : MARCH 28, 2016

P.C.:

1 This Court while disposing of the Criminal Writ Petition No.1903 of 2013 by order dated 28th August 2013 directed the learned Metropolitan Magistrate to register separate miscellaneous case and hold separate enquiry with regard to the allegations made by the petitioner against the respondent Nos.1 to 6. The respondent Nos.1 to 6 are the Police Officers. The learned Metropolitan Magistrate rejected the plea of the writ petitioners in the said Criminal Writ Petition for initiating action against the respondent Nos.1 to 6 under the Contempt of Courts Act,1971 (for short 'the said Act'). This Court referred to the Contempt of Court (Bombay High Court) Rules,1994 (for short 'the Contempt Rules'). This Court held that on conjoint reading of section 15 (2) of the said Act and Rule 12 of the Contempt Rules, the learned Metropolitan Magistrate was under an obligation to hold an enquiry after issuing show

cause notices to the alleged contemnors. Therefore, this Court directed that the enquiry be held by the learned Metropolitan Magistrate.

2 Enquiry was accordingly initiated on the allegation that warrant as directed by the Court of the Metropolitan Magistrate was not executed by the respondents (proposed contemnors).

3 As directed by this Court, the learned Metropolitan Magistrate, 58th Court, Bandra held enquiry and passed an order dated 28th February 2015. The learned Metropolitan Magistrate was of the view that evidence recorded by him showed that bailable warrant was duly executed and the report was sent on 3rd March 2010. However, the report was erroneously sent to the Metropolitan Magistrate's Court, Mumbai without specifically mentioning the correct name of the Court. It is for this reason that the report did not reach the concerned Court of the learned Metropolitan Magistrate. By the said order dated 28th February 2015, the learned Metropolitan Magistrate observed that the respondent No.3 had tendered an apology. The respondent No.2 was Officer in charge of the Pandharpur Police Station. In fact, the order passed by the learned Metropolitan Magistrate shows that no case of committing contempt was made out.

4 This Court issued Rule in this Contempt Petition on 8th June 2015. The contemnors have tendered separate affidavits. Apart from explaining as to why service report of warrant did not reach

the concerned Court, the contemnors have tendered apology.

5 We have perused the order dated 23rd February 2015 passed by the learned Metropolitan Magistrate. It appears that in Criminal Case No.1211/SS/2008, the learned Metropolitan Magistrate, 58th Court, Bandra issued a bailable warrant on 19th January 2010 to the accused in the said case. The said warrant was received by the Office of the Superintendent of Police, Solapur on 28th February 2010 and was sent to the Pandharpur Police Station for execution. Warrant was executed and the execution report was sent to the Court of Metropolitan Magistrate, Mumbai vide Outward entry No.926 of 2010 dated 3rd March 2010 by the Head Constable Shri Kamble. It appears that the report was addressed to the Metropolitan Magistrate, Mumbai in stead of addressing it to the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai. That is the reason why the report did not reach the concerned Court of the learned Metropolitan Magistrate.

6 Shri Shahaji Mahadev Kambale, the fourth contemnor has filed affidavit. He was working as a Police Head Constable at Pandharpur City Police Station. He deposed that he has executed the warrant on 3rd March 2010. He has tendered unconditional apology for sending the report at a wrong address. He has stated in paragraph as under:

"I tender my unconditional apology to this

Hon'ble Court for inadvertent mistake in address instead of "Metropolitan Magistrate, 12th Court, Bandra, Mumbai" it was written "Metropolitan Magistrate Court, Mumbai". I say that the letter was sent to the learned Court by ordinary post. I say that due to my mistake in address the letter of execution report was not received by the learned Metropolitan Magistrate, 12th Court, Bandra, Mumbai. I am tendering my unconditional apology for the same."

7 Thus, the record shows that the order passed by the learned Metropolitan Magistrate, 58th Court, Bandra on 19th January 2010 of issuing bailable warrant was duly complied with as the bailable warrant was executed on 3rd March 2010. The report of execution was not received by the concerned Court due to inadvertent mistake made by Shri Kamble while writing the address of the concerned Court.

8 We must note that even the learned Metropolitan Magistrate, 58th Court, Bandra did not find that any contempt has been committed by any of the contemnors.

9 Suffice it to say that this is not a case of wilful or deliberate disobedience of the order of the learned Metropolitan Magistrate dated 19th January 2010 by any of the contemnors. No case is made out of criminal contempt.= Apology tendered by Shri Kamble deserves to be accepted.

10 Accordingly, we dispose of the Reference by
discharging the contempt notices.

(P.D.NAIK,J.)

(A.S.OKA,J.)