

Anand

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

WRIT PETITION NO.2139 OF 2015

The State of Maharashtra .Petitioner

Vs.

Sou. Kshitija Raju Sonule & anr. .Respondents

Ms Anamika Malhotra, APP, for the Petitioner -
State

Mr.Prashant Darandale, Advocate, for the
Respondents

CORAM : REVATI MOHITE DERE, J.

DATE : 23.11.2016

P.C.

. Heard learned APP for the Petitioner -
State and the learned counsel for the
Respondents.

2. By this Petition, the Petitioner has
impugned the order dated 02.07.2014 passed by
the learned Judicial Magistrate F.C., Pune in
R.C.C.No.2680 of 2010 below Exh.57 and the order
dated 30.12.2014 passed by the learned
Additional Sessions Judge, Pune in Cri. Revn.

Appln. No.488 of 2014 below Exh.9.

3. Learned APP submits that in the charge framed against the Respondents – Accused, it was inadvertently mentioned as 10.09.2010 to 19.10.2010 instead of 10.09.1996 to 19.10.1996. She submits that it was an inadvertent mistake and that the prosecution realized the said mistake, only after the Respondents statement was recorded under Section 313 of the Code of Criminal Procedure. She submits that after the 313 statement was recorded, the State filed an Application bringing to the notice of the Court the inadvertent mistake in the year mentioned in the charge and sought appropriate correction in the same. She submits that the prosecution case has proceeded and evidence was led, with regard to the incident which had taken place between 10.09.1996 to 19.10.1996 and therefore, no prejudice would be caused to the Respondents, if the correction is permitted with regard to the

year mentioned in the charge.

4. Learned counsel for the Respondents opposes the Petition. He submits that the Application was not maintainable and that the said correction would amount to an alteration in the charge. He submits that if the correction is permitted, it will indirectly alter the charge which is not permissible.

5. Perused the papers. It appears that charge was framed in the said case by the learned Judicial Magistrate F. C., 37th Court, Pune, on 20.06.2011 for the alleged offences punishable under Sections 419, 420, 467, 468, 471 r/w.34 of the Indian Penal Code. The period mentioned in the said charge is stated to be from 10.09.2010 to 19.10.2010. It appears that thereafter, evidence was led by the prosecution and statements of the Respondents – Accused were recorded under Section 313 of the Code of

Criminal Procedure. It is, at this stage, the prosecution realized that the year mentioned in the charge was incorrect and that it was inadvertently mentioned as 2010, instead of 1996. The error that has crept in, is with regard to the year i. e. 2010 instead of 1996. The prosecution, therefore, preferred an Application seeking to correct the year mentioned in the said charge. The said Application was rejected by the learned Magistrate on 02.07.2014. The said order was challenged by the Petitioner – State in Revision. Learned Sessions Judge after hearing the parties was also pleased to dismiss the said Revision Application, being Cri. Revn. Appln.No.488 of 2014 vide order dated 30.12.2014. It appears that both the Courts below were of the opinion that the said correction would amount to alteration of the charge and hence, disallowed the Application preferred by the State. It is pertinent to note,

that the entire evidence has proceeded on the ground that the incident had taken place between the period 10.09.1996 to 19.10.1996 and not 10.09.2010 to 19.10.2010. The statement under Section 313 of Cr.P.C. has also proceeded on the footing that the incident was from between 10.09.1996 to 19.10.1996 and not 10.09.2010 to 19.10.2010. In view of the same, no prejudice would be caused to the Respondents. The mistake on the face of it is an inadvertent mistake. No prejudice whatsoever is caused to the Respondents, if the year mentioned in the charge is corrected.

6. Considering the aforesaid, in the interest of justice, the learned Magistrate, 37th Court, Pune is directed to correct the year from 2010 to 1996, in the charge (Exh.13).

7. Accordingly, the Petition is allowed on the aforesaid terms. The impugned orders dated

02.07.2014 passed by the learned Judicial Magistrate F.C., Pune in R.C.C.No.2680 of 2010 below Exh.57 and 30.12.2014 passed by the learned Additional Sessions Judge, Pune in Cri. Revn. Appln. No.488 of 2014 below Exh.9 are quashed & set aside.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)