

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1897 OF 2016

Ishwar Gulab Naik. ... Petitioner.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Rishi Bhuta, advocate for Petitioner.

Ms. A.T. Javeri, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 14, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
APP for State. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The present Petitioner happens to be the accused in C.C. No.
231/SW/2014. The complaint was filed by the respondent before the
Metropolitan Magistrate, 32nd Court, Bandra, Mumbai. The learned
Magistrate had called for a report under Section 202 of the Code of

Criminal Procedure, 1973. Kherwadi police station had filed negative report. The learned Magistrate was of the opinion that no prima facei case is made out and hence, prayer of fresh investigation was rejected and the case was disposed of accordingly.

4 Being aggrieved by the said order, the original complainant filed Criminal Revision Application No. 386 of 2016 before the Sessions Court at Greater Mumbai. The certified copy of the cause title of the said revision application would indicate that the present petitioner who happens to be original accused was arraigned as respondent No.2. The matter had come up before the Court on 14th March, 2016. On the very first day, learned Revisional Court had taken into consideration the presence of the revision petitioner. The matter was adjourned to 18th March, 2016 and was posted for orders. Finally by an order dated 21st April, 2016 revision application filed by the original complainant was allowed and the Revisional Court had directed the learned Metropolitan Magistrate to consider the complaint for fresh consideration. The order dated 20th January, 2016 was quashed and set aside.

5 The learned Counsel for the Petitioner rightly submits that in fact, the Petitioner would be affected by the said order. The Petitioner was arraigned as a party respondent in the revision application. However, no notice was issued. In fact, the proceedings were almost terminated by the order passed by the Metropolitan Magistrate and hence, it would be incumbent upon the Revisional Court to hear the respondent. In view of this, petition deserves to be allowed with the direction that the revision application is restored to its original status and the learned Sessions Judge shall hear the same on its own merits and dispose of the same in accordance with law.

6 In view of this, the order dated 21st April, 2016 passed by the Revisional Court is hereby quashed and set aside. Revisional Application is restored to its original status. The learned Revisional Court shall give an opportunity to the present petitioner i.e. the respondent No. 2 in the revision application to put up his case. The learned Sessions Court shall hear the revision application on its own merits without being influenced by the orders passed by the learned Magistrate or this Court since this Court has not touched the merits of the matter.

7 The learned Counsel for the Petitioner submits that the revision application has been disposed of. In view of the fact that the revision application is restored to its original status, the learned Sessions Court shall issue notice to both the parties and give specific date for causing their appearance. On the first given date, the Petitioner shall remain present before the Sessions Court.

8 The Rule is made absolute in the above terms. The Writ Petition is allowed and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)