

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

CRIMINAL APPLICATION NO.1317 OF 2016

Chandresh @ Chandrahas Vitthal Suvarna Applicant

versus

State of Maharashtra ... Respondent

Mr.Neelsh Kalantri, Advocate appointed as Amicus Curiae for the Applicant.

Ms.Pallavi Dabolkar, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 13th DECEMBER, 2016.

P.C. :

1. This application is made u/s 482 of Cr.P.C. thereby challenging the judgment and order dated 01/08/2016 passed by the learned Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. The applicant/accused was prosecuted for the offence punishable u/s 325 of the Indian Arms Act in C.R.No.85/09 of Ghatkopar Police Station in C.C. No.658/PW/2009. After filing of the chargesheet by police, the learned Metropolitan Magistrate framed charges at Ex.2 against the applicant and at that time applicant did not plead guilty. However, subsequently applicant filed application below Ex.15 and therein he pleaded guilty. After

going through the record the learned Metropolitan Magistrate held the applicant guilty for the offences and sentenced him to suffer minimum sentence for the said offence i.e. the simple imprisonment of three years and to pay a fine of Rs.500/- in default to undergo simple imprisonment of one month. The order of set off was also passed. The applicant being aggrieved with the said order, moved this application on the ground that the order is bad in law and it is to be quashed and set aside.

2. The learned amicus curiae argued that the fact that the petitioner earlier did not plead guilty below Ex.2 ought to have taken into account by the learned Judge and should not have sentenced him on the basis of said application Ex.15. The trial Court ought to have recorded evidence and should have given full opportunity of the trial.

3. The learned counsel appointed as Amicus Curiae also submitted that the said order of the trial Court of sentencing him is to be set aside considering the grounds stated in this application. The learned prosecutor has submitted that the applicant should

have filed appeal challenging the sentence awarded to him by the learned Metropolitan Magistrate. She argued that u/s 375 (b) of Cr.P.C. there are two categories of cases wherein appeal can be filed and appeal cannot be filed, when accused pleads guilty. If the sentence after pleading guilty is to be challenged on the ground of its legality or to the extent, then u/s 375 (b) appeal is the only remedy before the applicant. In the present case applicant has challenged the legality of the sentence. Hence this application u/s 482 is not maintainable and it is to be dismissed.

4. On the considering the facts of the case and submissions made by the learned prosecutor as the accused is challenging to the extent or the legality of the sentence after he pleads guilty, then the said order is appealable u/s 375 (b) of the Code. However, after going through the order below Ex.1 passed by the learned Magistrate and after enquiry made to both the counsel it is informed that the applicant was not represented by the advocate when he pleaded guilty before the learned Magistrate. It is to be noted that earlier when the charge below Ex.2 was read over to him, he pleaded not guilty and subsequently

he pleaded guilty by moving application Ex.15. Under such set of facts it was necessary for the trial Court to appoint the advocate to defend the cause of the accused and to make him aware of the consequence of pleading guilty. As the accused was not represented by the advocate before the trial Court when pleaded guilty, only on this ground I am inclined to invoke powers u/s 482 of Cr.P.C. and set aside the said impugned order passed by the learned Magistrate and remand the matter to the learned Magistrate. The learned Magistrate is directed to ask the accused whether he wants to engage the counsel of his choice and if not then to appoint advocate from the panel of legal aid and then record plea of the accused and proceed.

5. If accused not pleads guilty then the learned Magistrate to endeavor to complete the trial within six months.

6. Writ petition is disposed off accordingly.

(MRIDULA BHATKAR, J.)