

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

CRIMINAL WRIT PETITION NO.3896 OF 2016

Chaitanya Jaywant Joshi

.... Petitioner

versus

Sr. Police Inspector & Ors.

... Respondents

Mr.Umesh R. Pawar, Advocate for the Petitioner.

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

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 05th DECEMBER, 2016.

P.C. :

1. In this Writ Petition, the petitioner prays that the summons dated 30/06/2013 in Chapter Case No.8/2016 and the preliminary order/notice dated 30/07/2016 in Chapter Case No.12/2016 initiated u/s 110 (e)(g) of Cr.P.C. is to be quashed and set aside. Similarly, he also prays that the order dated 16/09/2016 passed by the learned Ad-Hoc District Judge-II and Additional Sessions Judge, Pune, in Criminal Revision Application No.330/16 is to be quashed and set aside.

2. This petitioner is 20 years old boy. When he was

juvenile, one case was registered against him. Thereafter, one case No.72/12 was registered against him at Shivaji Nagar Police Station, Pune, however, he was acquitted from that case on 28/11/2015. As on today only one case No.43/2016 punishable u/s 326, 427, 323 r/w 34 of I.P.C. is pending in Shivaji Nagar Police Station. As per the case of the prosecution, two NC cases bearing Nos.29/2013 and 125/2014 were made against this petitioner. It is the case of prosecution that there is a dispute between Joshi Family and one More Family and the fights had taken place between them, which resulted into prosecution of the present petition.

3. The learned counsel for the petitioner has pointed out Ex.B, summons issued by ACP, Vishrambaug, Pune City dated 30/06/2016 in Chapter Case No.8/2016 u/s 110(e)(g) of Cr.P.C. wherein he was called to appear before the authority on 18/07/2016 to give reply. However, Ex.C, a Notice-cum-Order was passed in Chapter Case No.12/2016, which is u/s 111. It is submitted that by this notice-cum-order dated 30/07/2016, the accused was directed to remain present on 18/07/2016. He

pointed out that in the chart of this notice Ex.C, two cases are mentioned. However, only case No.43/2016 is pending as on today against the petitioner and case No.72/2012 is concluded in acquittal on 28/11/2015. Thus, he submitted that the learned Sessions Judge has failed to consider this position and no other case is pending against him.

4. The learned prosecutor has submitted that the present petitioner is a habitual offender. The notice was given, first summons was sent on 30/06/2016, wherein he was called on 18/07/2016 for the first time and he had appeared before the authority on that day and sought time. So matter was fixed on 25/07/2016 and he again asked for time and then matter was fixed on 08/08/2016. Thereafter, the matter was fixed on 16/08/2016. However, he did not appear before the authority and filed Revision Application No.336/16. She submitted that the petitioner is a quarrelsome person and is involved in many cases involving offences against human body. So she defended the notice u/s 110 (e)(g) and 111 of Cr.P.C. and so also supported the order passed by the learned Sessions Judge, Pune.

5. Perused all the documents. However, the number of the Chapter Case is mentioned as 08/2016 in summons and thereafter in the notice the Chapter Case is numbered as 12/2016 disclosing that Assistant Commissioner and Special Executive Magistrate was not attentive when he passed this order. In the order passed u/s 110 (e)(g), it was necessary to specify the numbers of the cases which are against the petitioner. The Criminal Case No.72/12 shown subjudice, in fact was concluded in acquittal on 28/11/2015. Thus, the authority has not applied its mind, while considering in how many criminal cases the petitioner has committed offence. It appears from the record that this petitioner and his family are hostile towards one More family. Therefore there are some disputes. The offence which was committed by this petitioner, when he was juvenile, not to be taken into account at this stage. The criminal antecedents of the petitioner, as on today show that only one case is pending against him. Thus, it is not a sufficient material to label him as a habitual offender. It was necessary for the authority to point out specifically, how the habitual petitioner has committed crime or

has continuous tendency to commit the crime against society or other individuals.

6. Considering this, I am inclined to allow this petition.
7. Rule is made absolute in terms of prayer clause (b), (c), (d).

(MRIDULA BHATKAR, J.)