

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

CRIMINAL APPLICATION NO.1362 OF 2015

Mahesh Dyneshwar More ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Prashant Gurav for the Applicant.

Mr. Y.M. Nakhwa, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :12th FEBRUARY, 2016.

P. C. :

At the outset the learned counsel for the Applicant seeks leave to amend the prayer clause so as to challenge the impugned order dated 28.1.2016 and also to place on record copy of the impugned order dated 28.1.2016 passed by the learned Metropolitan Magistrate, 32nd Court, Bandra, Mumbai. Leave is granted. Amedment to be carried out forthwith.

2. Rule. Rule made returnable forthwith.

3. This is an application filed under section 482 of the Criminal Procedure Code challenging the impugned orders dated

26.11.2015 and 28.1.2016 passed by the learned Metropolitan Magistrate, 32nd Court, Bandra, Mumbai, initially dismissing the application for exemption and issuing non bailable warrant and subsequently dismissing the application for cancellation of warrant.

4. Heard the learned counsel for the Applicant and the learned APP for the Respondent -State. I have perused the records and considered the arguments advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State. The records indicate that the Applicant is facing trial for offences punishable under sections 279, 338,, 304 (A) of the IPC. The records further reveal that substance of accusation was explained to the accused and case was fixed for trial on 26.11.2015 on which date the Medical Officer was summoned and was present. The Applicant-accused was absent and an application for exemption was filed stating that the Applicant was unable to appear before the Court due to some personal difficulties. The learned Magistrate dismissed the said application on the ground that witness was present and further directed to issue non bailable warrant against the Applicant. The learned Magistrate also dismissed the application for cancellation of said warrant on the ground that the witness was present and non bailable warrant was ordered to be issued. The learned Magistrate has further stated that the Advocate for

the accused was not ready to cross examine the witness and application for cancellation of warrant was dismissed.

5. It is to be noted that the learned Magistrate has not given any reasons for not exempting the accused on 26.11.2015. The presence of the Applicant was not required for the purposes of cross examination of the witness. The impugned order dated 26.11.2015 does not indicate that the Advocate for the Applicant, who had tendered the exemption application was not ready to cross examine the witness. The records also indicate that the Applicant was otherwise regular in attending the Court and as such the learned Magistrate was not justified in rejecting the application for cancellation of the warrant.

6. The impugned orders cannot be sustained and hence, the application is allowed. The impugned orders dated 26.11.2015 and 28.1.2016 are set aside. The Applicant is directed to appear before the Court on the scheduled date.

(ANUJA PRABHUDESSAI, J.)