

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION (CWP) NO. 87 OF 2016

(Yashwant s/o Nathuji Janwe vs. State of Maharashtra, Ministry of Homes thr. PSO, PS,
Ambazari, Nagpur & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
FEBRUARY 24, 2016.**

Heard Shri Janwe, the petitioner-in-person and Shri V.A. Thakare, learned Additional Public Prosecutor for respondent No. 1.

After the matter was listed first, this Court asked the petitioner, who appears in person to obtain legal advise. The matter was thereafter adjourned once to enable him to obtain advise. He has accordingly filed a pursis on 09.02.2016 bearing Stamp No. 473 of 2016 mentioning that he has consulted his friends who are practicing law. In the light of his submission that he has consulted the Advocate and has obtained legal advise, we have proceeded to hear him further on merits.

The prayer in Criminal Writ Petition filed before us under Articles 226 and 227 of the Constitution of India, read with Section 482 of Criminal Procedure, is to call for R & P of Criminal Application (APL) No. 639 of 2013 and Criminal Complaint Case No. 1237 of 2013 and thereafter to provide to the petitioner an opportunity of speaking to the minutes and to revise impugned oral judgment pronounced

on 05.11.2014, by the learned Single Judge of this Court.

A perusal of judgment dated 05.11.2014 delivered in Criminal Application No. 639 of 2013 shows that present petitioner was non-applicant No. 2 therein. After hearing the learned counsel for the applicants, the learned APP and non-applicant No.2 - in person finally, the Court has, for the reasons recorded, allowed that application and the proceedings against the applicants before it, pending in Criminal Complaint No. 1237 of 2013, have been quashed.

The said complaint was instituted by the present petitioner and the learned J.M.F.C. had issued process under Sections 107, 294, 324, 354, 427, 500, 504 and 506(II) read with Section 149 of Indian Penal Code against Accused Nos. 1 to 15 and accused No. 16, the applicants before this Court in Criminal Application No. 639 of 2013 under Section 482 of Code of Criminal Procedure, for setting aside of said cognizance.

The grievance of Shri Janwe, the petitioner-in-person is that though he appeared in person, he had filed before the learned Single Judge of this Court a written note of arguments raising various contentions and relied upon some judgments. Those contentions or judgments do not find any mention in the order in the judgment dated 05.11.2014, only one of his contention has been looked into. He, therefore, submits that there is failure to exercise jurisdiction and denial of justice under law.

His effort is to demonstrate that issuance of process by J.M.F.C. was in accordance with law and it could

not have been interfered with.

He has relied upon four judgments, to which we make a reference during the course of this order.

The learned APP has pointed out that the proceedings as filed are not maintainable before this Court.

The first judgment on which Shri Janwe, petitioner-in-person has placed reliance upon the judgment in the case of Sumedh Singh Saini vs. Davinder Pal Singh Bhullar & Ors., reported at AIR 2012 SC 364. In para 27, the Hon'ble Apex Court has observed that if a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 of the Code of Criminal Procedure, would not operate.

In the case of Mosst. Simrikhia vs. Smt. Dolley Mukherjee @ Smt. Chabbi Mukherjee & Anr., reported at AIR 1990 SC 1605(1), Shri Janwe, petitioner-in-person has relied upon para 4, which again considers provisions of Section 362 of Cr. P.C. and then points out that Section 482 of the Cr. P.C. enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The judgment in the case of Deepak Thanwardas Balwani vs. State of Maharashtra & Anr., reported at 1984 (1) Bom. C.R. 441, delivered by the learned Judge of this Court has also been relied upon to draw support from para 6 therein. There it has been observed that the High Court can review or revise its judgment if such a judgment is pronounced without giving an opportunity of being heard to a party which is entitled to a hearing and that party is not at fault.

The order dated 05.12.2014 in Criminal Writ Petition No. 4188 of 2014 has also been relied upon to submit that the Division Bench of this Court can grant suitable relief by modifying the orders of the learned Single Judge. The facts therein show that this Court while allowing the petition partly, dismissed it as far as the prayer for issuing a writ of mandamus to direct registration of an offence on the basis of the complaint was concerned. The said Division Bench relegated the petitioners to avail the remedies available to them in law. The State of Maharashtra preferred Special Leave Petition and it is dismissed. The petitioner also preferred SLP and it was allowed to be withdrawn with liberty to move the High Court. Exercising that liberty, Criminal Writ Petition No. 4188 of 2014 came to be filed. Thus, it is in this background that the cognizance of the matter was taken.

In the present facts, the learned Single Judge has disposed of Criminal Application (APL) No. 639 of 2013 on 05.11.2014. The matter was heard finally on that date and the judgment was delivered in open Court. The present

petitioner was very much aware of said judgment. The proceedings, which seek prayers as mentioned supra, indirectly assail that judgment and have been filed on 21.01.2016. The petitioner could have assailed that judgment within the stipulated time or could have moved appropriate proceedings before the Hon'ble Single Judge within time. That has not been done.

We have in this situation, after the petitioner completed his hearing, asked him as to why this Court should not hold that he has unnecessarily wasted time of this Court and in future he should be refrained from appearing in person.

Shri Janwe, petitioner-in-person has asked about the error, if any, committed by him in filing such proceedings.

We find that the petitioner perhaps is not in a position to comprehend the situation. We had asked him to consult the Advocates and he has filed a pursis that after consultation, he argued the matter today. We have accepted his statement.

As we find the proceedings not maintainable, we are dismissing it. The petitioner shall pay cost of Rs.100/- (Rs. One hundred only) to the High Court Legal Services Sub-Committee, Nagpur.

After the order was dictated and the petitioner left the Court, the learned APP who was perusing the records, pointed out that the petitioner had approached the Hon'ble Apex Court against the order of the learned Single Judge dated 05.11.2014 and his Special Leave to Appeal

(Criminal) 3365 of 2015 was dismissed on 17.04.2015/01.05.2015. His review was also dismissed by the Hon'ble Apex Court on 08.09.2015.

The petitioner-in-person has in para 67 of his petition disclosed that on the date of filing the petition, no proceedings are pending before the Hon'ble Apex Court. However, he has not pointed out dismissal of his SLP or then dismissal of review petition.

In this situation, the petitioner is directed to place on record of each matter filed by him, a copy of this order for the information and knowledge of the learned Presiding Officers or the Hon'ble Judges, as the case may be.

JUDGE

JUDGE

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