

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.187 OF 2017

Subhash D. Parekh	...	Petitioner
V/s.		
Amol Kiran Choksi & Anr.	...	Respondents

Mr.Sanjay Bhatia, Advocate for the Petitioner.

Mr.Bhavesh M.Thakur, Advocate for the Respondent No.1.

Mr.S.R.Shinde, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 8th September 2017.

P.C. :

1 By this petition, the petitioner/original accused is
challenging the Order dated 21/10/2016 passed by the learned
Metropolitan Magistrate, 40th Court, Girgaon, Mumbai.

2 Heard the learned Advocate appearing for the
petitioner/original accused. By narrating the history of litigation,
the learned Advocate drew my attention to the Order passed by
the learned Additional Sessions Judge, Greater Mumbai in
Criminal Revision Application No.1139 of 2013 filed by the
respondent No.1 herein/original complainant and contended that

the learned revisional Court ought not to have issued process for the offence punishable under Section 499 read with Section 500 of the Indian Penal Code (hereinafter referred to as “IPC” for the sake of brevity) against the present petitioner. He further argued that on 05/12/2015 though parties were directed to appear before the trial Court, papers did not reach and the criminal case was not on board. According to the learned Advocate for the petitioner, after eight to nine months, respondent No.1 herein/original complainant applied for issuance of notice and wife of the present petitioner accepted that notice and informed the Court to serve the same on the petitioner/accused. It is further argued that the accused has lost his memory and has become a person of unsound mind. Even the police while taking efforts to serve summons, informed the learned Metropolitan Magistrate that the petitioner is hospitalized. Therefore, he prays that petition deserves to be allowed.

3 I have also heard the learned Advocate appearing for the respondent No.1/original complainant. The learned Additional Public Prosecutor appears for the Respondent No.2/State.

4 Unfortunately, all submissions so advanced by the learned Advocate for the petitioner are irrelevant for the purpose of deciding the instant writ petition. Initially, the complaint filed

by respondent No.1/original complainant came to be dismissed and that Order was set aside by the revisional Court in Criminal Revision Petition No.1139 of 2013. Process was directed to be issued against the present petitioner/original accused for offence punishable under Section 499 read with Section 500 of the IPC with a further direction to parties to appear before the learned trial Court on 05/12/2015. This Order was passed when parties were in appearance before the learned revisional Court.

5 Be that as it may, what is challenged in the instant petition is order dated 21/10/2016 passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai. By this Order, bailable warrant for the sum of Rs.5,000/- came to be issued against the present petitioner/original accused. The learned trial Court has observed that the revisional Court i.e. the learned Additional Sessions Judge had directed the parties to appear on 05/12/2015 and as such, there was no need to issue any further notice or summons to petitioner/accused and he was duty bound to appear before the Court on that day. It has further observed that the petitioner is residing with his wife and daughter of the petitioner/accused is attending the proceedings regularly. In the wake of this factual backdrop, bailable warrant came to be issued as the petitioner being accused failed to appear before the learned Metropolitan Magistrate in the criminal case. No illegality or infirmity is found in that Order of issuance of bailable warrant

when the accused was not in attendance and the revisional Court directed him to appear before the trial Court on 05/12/2016. Therefore, the impugned Order does not require interference at the hands of this Court in writ jurisdiction.

6 Submissions of the learned Advocate appearing for the petitioner regarding ill-health of the petitioner can be taken care of by the concerned trial Court and the petitioner can move an appropriate application in that regard before the learned trial Court.

7 The petition is, therefore, dismissed.

(A.M.BADAR J.)