

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 704 OF 2017

Mr. Harishchandra M. Vange & Anr. Petitioners

Versus

Mr. Eknath Sakharam Hake & Anr. Respondents

Mr. Tejesh Dande a/w Mr. Bharat Gadhavi I/b. Tejesh Dande & Associates for Petitioners.

Mr. V.V.Gangurde, APP for Respondent No.2/State.

Mr. Pandit Kasar for Respondent No.1.

CORAM : RAVINDRA V. GHUGE, J.
DATE : MARCH 20, 2017.

P.C.

1. I have heard the learned Advocates for the respective sides.

2. A peculiar situation has arisen in this proceeding. The Petitioners preferred Criminal Revision No. 260 of 2016 before the Revisional Court on 18/6/2016. They also moved an application for interim relief.

3. There is no dispute that the application was not decided by the Revisional Court. The Roznama placed on record indicates

that most of the times when the matter was posted for hearing, the Revisional Court was busy. The matter was on board for about 15 dates. The Roznama indicates that on about nine dates, the Court was busy in recording evidence in other matters. On few occasions, the Respondent before the Revisional Court was absent and on one occasion the Petitioners were also absent

4. It is stated that in the above situation, the Petitioner was advised to withdraw the Revision Petition and prefer a Criminal Writ Petition in this Court. It is, however, frankly stated by the Petitioners that when the application was made for withdrawing the Writ Petition, it was not mentioned that the matter is being withdrawn so as to approach this Court. It is, however, solemnly stated that the only reason for withdrawing the Petition was that the Revisional Court did not have the time to hear the Petitioners as it was held up in other matters.

5. In the above backdrop, I had granted leave to the Petitioner to amend the prayer clause and add prayer clause (g), which is as under :

“The Criminal Revision Application No. 260 of 2016 may kindly be restored to the file of District Judge-2 and Additional Sessions Judge, Pune for hearing on its own merits, with direction to decide the Interim Application below Exh.5 expeditiously, and in any case within 4 weeks from the date of Communication of the Order; and personal presence of the Petitioners/Orig. Accused Nos. 1 and 2 may kindly be dispensed with before the Ld. JMFC,

Pimpri, Pune in Criminal M.A.No.479 of 2014 till decision on the Interim Application i.e. Exh.5 in Criminal Revision Application No. 260 of 2016.”

6. Though the learned Counsel for Respondent No.1 has opposed this Petition, he submits that a non-bailable warrant has been issued against the Petitioners on two occasions. They are yet to appear. The Petitioners should appear before the trial court and seek an exemption. He further submits that if the Revision Petition is restored, the same could be decided by the Revisional Court on its own merits and it may be observed in this order that this Court has not entertained this petition on its merits.

7. As noted above, these are peculiar facts before the Court and it is quite evident that the Petitioners have been ill-advised to withdraw the Revision Application which they have rightly filed under section 397 of the Code of Criminal Procedure. If a pedantic view is taken, the Petitioners would be rendered remediless.

8. Considering the above, this Petition is partly allowed only to the extent of granting prayer clause (g) to the limited extent of restoring Criminal Revision Application No. 260 of 2016 to the file of the learned Sessions Judge, Pune.

9. As such, both the litigating sides shall appear before the Revisional Court on 31st March, 2017. Formal notice need not be issued by the court. The Revisional Court would consider the pending application for interim relief filed by the Petitioners, or if it

is filed after appearance.

10. Insofar as the request of the Petitioners to exempt their presence from the trial court is concerned, this Court is not required to pass any such order. The Petitioners can appear before the trial court in view of the non-bailable warrant issued against them and if they desire to seek exemption, they may do so by making an application in accordance with law and the trial court would decide the same on its own merits.

(RAVINDRA V. GHUGE, J.)