

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 720 OF 2017

Chandbibi Zaidi and anotherPetitioners

Vs.

The State of Maharashtra ... Respondent

WITH
CRIMINAL APPLICATION NO. 98 OF 2017
IN
CRIMINAL WRIT PETITION NO. 720 OF 2017

Kiran Rasiklal MehtaIntervenor

IN THE MATTER BETWEEN

Chandbibi Zaidi and anotherPetitioners

Vs.

The State of Maharashtra ... Respondent

Mr. Arshad Shaikh i/b Mr. Mohan V. Khatavkar
Advocate for Petitioner
Mr. Kiran R. Mehta Intervenor in person.
Ms. Neet Jain APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 3rd APRIL, 2017.

P.C.

- 1) Heard the learned counsel for the petitioners and the learned APP.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) That proceedings in Criminal Case No. 430/PW/2007 have been stayed by this Court (Coram: M. L. Tahaliyani, J.) vide order dated 15/10/2013 in Criminal Writ Petition No. 1505 of 2013 and 1506 of 2013. The relief is granted in favour of petitioners/applicants therein until further orders by this Court. On 11/09/2015, matter was before this Court (Coram: Smt. Sadhana S. Jadhav, J.). None appeared for the respondent and interim orders were continued.
- 4) The learned counsel for the petitioners/applicants submits that petitioners were apprehensive of the applications being filed by the complainant and therefore by way of abundant caution, although the trial was stayed, petitioners continued to file an application seeking exemption from appearance as the appearance before the trial court would be futile in view of

the fact that the trial has been stayed by the Hon'ble High Court.

5) It appears from the records that on 31/01/2017, petitioners have filed an application seeking exemption. The learned Magistrate had noted that the accused are not attending the Court and are seeking exemption from appearance by filing medical certificates and therefore, the learned Magistrate, upon considering that the case is old, had issued bailable warrant against the petitioners. Petitioners then filed an application seeking cancellation of bailable warrants by demonstrating before the Court that the trial has been stayed by the High Court and is pending adjudication. The learned Magistrate has then passed an order on 02/02/2017 and has observed that order issuing bailable warrant is stayed till the next date and has further directed the accused to pay penalty of Rs. 300/- as application seeking permanent exemption was filed. Being aggrieved by the said order, petitioners have approached this Court.

6) Criminal Application No. 98 of 2017 is filed seeking liberty to intervene in writ petition. Office report shows that Committee of the view that

applicant would be in a position to assist the Hon'ble Court in deciding the matter. Upon query made by the Court, applicant who is Advocate by profession submits that he has not filed any intervention application. At the same time, he supports the order passed by Metropolitan Magistrate, 18th Court, Girgaum. He happens to be original complainant. It is submitted by the original complainant that although the trial is stayed, it is incumbent upon the petitioners to appear on each and every date as there is likelihood that they may abscond and therefore, it is necessary to ensure that they would make themselves available for the purpose of trial.

7) In fact, the petitioners have challenged the Judicial order and therefore, it would not be necessary to consider the submissions of original complainant.

8) It is a matter of record that the trial has been stayed by this Court. During the operation of the stay to the further proceedings, presence of the accused would only be an idle formality and therefore, it would not be practicable to ask the accused to remain present before the Court on each and every date as long as they undertake to attend the trial once the trial

commences.

9) It is also submitted that upon considering the merits of the matter, trial has been stayed and the next date is 14/06/2017. It is submitted that the bailable warrant has been recalled by the Magistrate, however, the order reads that:

“Execution and operation of bailable warrant shall remain stayed only till the next date i.e. 05/04/2017”.

10) It is in these circumstances that petition deserves to be allowed.

ORDER

(i) Writ petition is allowed in terms of prayer clause (b) & (c).

(ii) The orders dated 31/01/2017 and 02/02/2017 passed by learned Metropolitan Magistrate, 18th Court at Girgaum, Mumbai in Criminal Case No. 430/PW/2007 are hereby quashed and set aside.

(iii) The learned Magistrate shall not insist upon the presence of the accused

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till the disposal of writ petition nos. 1505 of 2013 and 1506 of 2013.

(iv) Petitioners shall give an undertaking before the Magistrate that they will not leave India without prior permission of the Court.

(v) Petitioners shall further give an undertaking that they would mark their presence before the learned Magistrate on 15/06/2017 and thereafter as per the orders issued in writ petition nos. 1505 of 2013 and 1506 of 2013.

(vi) It is made clear that exemption will not come to an end on 15/06/2017 and on 15/06/2017, petitioners shall appear before the Court and inform about the progress in writ petition nos. 1505 of 2013 and 1506 of 2013.

(vii) Intervention application is heard allowed and disposed of.

(viii) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)