

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.775 OF 2016

Mohammed Sami Ahmed, Prop. of Total Entertainment... Applicant
Vs.
State of Maharashtra and others ... Respondents

Mr. Prasad P. Pathare a/w. Mr. Rajesh D. Bindra for Applicant.

CORAM : R. G. KETKAR, J.
DATE : JULY 12, 2017

P.C. :

As the regular Court presided over by Hon'ble Mr. Justice A. K. Menon has passed "Not Before Me" order, the applicant has moved this Court as per the administrative order passed by the Hon'ble the Chief Justice.

2. Heard Mr. Pathare, learned Counsel for the applicant at length.
3. By this Application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), applicant, hereinafter referred to as 'complainant', has challenged the order dated 09.06.2016 passed by the learned Additional Sessions Judge (Borivali Division), Dindoshi in Miscellaneous Application No.94 of 2016 filed by the complainant in Criminal Revision Application No.32 of 2016. Criminal Revision Application No.32 of 2016 is filed by the accused challenging the order dated 18.12.2015 passed by the learned Metropolitan Magistrate, Railway Mobile Court issuing process in C.C.No.267/SW/2014.
4. Complainant has instituted complaint against the accused under Sections 406, 417, 418, 468 and 471 read with Sections 34 and 120-B Indian Penal Code, 1860 (for short 'I.P.C.'). By order dated 18.12.2015,

the learned Magistrate issued process against all the accused under Sections 406, 417, 418 read with Section 34 I.P.C.

5. Aggrieved by this order, accused preferred Revision under Section 397 of Cr.P.C. before the Sessions Court at Dindoshi. By order dated 04.02.2016, the learned Sessions Judge admitted the Revision and stayed proceedings in C.C.No.267/SW/14. The learned Sessions Judge also issued notice to the respondent (complainant), returnable on 05.03.2016.

6. The complainant has filed Criminal Miscellaneous Application No.94 of 2016 for dismissing Revision Application inter alia on the ground that the application is filed without affirmation in the Sessions Court Department at Dindoshi. Revision Application is alleged to have been affirmed by the accused before a Notary. There is no provision in Rules of the Court of Sessions for Greater Mumbai permitting the accused applicant to file Revision Application which is declared and / or affirmed before a Notary. The Application is verified by accused No.3 on behalf of accused No.1, 2, 4 and 5. Accused No.1, 2, 4 and 5 have not given Power of Attorney to accused No.3. In other words, accused No.3 is not authorized by accused No.1, 2, 4 and 5 to institute Revision Application on their behalf. Complainant, therefore, prayed for dismissal of the Revision Application as also for initiating appropriate criminal action against the accused. By the impugned order, the learned Sessions Judge has dismissed the application with costs.

7. In support of this Application, Mr. Pathare strenuously contended that the learned Sessions Judge failed to appreciate that the Revision Application is not maintainable. He reiterated the submissions that were made in the Application. For the reasons stated therein, he submitted

that the impugned order deserves to be set aside. In any case, the learned Sessions Judge may be directed to dispose of the Revision Application in a time bound manner.

8. I have considered the submissions advanced by Mr. Pathare. I have also perused the material on record. As noted earlier, by order dated 18.12.2015, the learned Magistrate had issued process against the accused under Sections 406, 417, 418 read with Section 34 I.P.C. Aggrieved by that decision, accused have preferred Revision Application. By order dated 04.02.2016, the learned Sessions Judge has admitted the Revision Application and stayed further proceedings in C.C.No.267/SW/14 pending before the learned Magistrate. As the Revision Application is admitted, in my opinion, interest of justice will be served by permitting the applicant / complainant to file application for disposal of the Revision Application in a time bound manner keeping all the contentions raised in Miscellaneous Application No.94 of 2016 and any other contention that may be available complainant open. If such application is made, the learned Sessions Judge will consider the same keeping in mind pendency of other cases. Subject to this, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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