

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3193 OF 2017

PERVEZ KHODAYAR RAISI

)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.C.K.Talekar a/w. Mr.Sohail Ahmed, Advocate for the Petitioner.

Mr.Subodh Pathak, Advocate for Respondent No.2.

Mrs.N.S.Jain, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 31st AUGUST 2017

P.C. :

1 Heard.

2 Rule. Rule is made returnable with consent of parties.

Heard finally.

3 The writ petitioner is the original complainant whose complaint and resultant order passed under Section 156(3) of the

Code of Criminal Procedure has finally resulted in filing of the charge-sheet against in all nine accused persons for offences punishable under Sections 420, 199, 200, 465, 467, 468, 471 and 120B of the IPC. This has resulted in registration of Regular Criminal Case bearing No.120 of 2016 before the learned JMFC. When the criminal case was fixed for framing of charge, respondent no.2 herein i.e. original accused no.2 moved an application for discharge. After hearing the parties, the learned JMFC by an order dated 6th May 2017 was pleased to reject that application. Feeling aggrieved thereby, respondent no.2 herein/accused no.2 invoked jurisdiction of the Sessions court by filing a revision petition which came to be registered as Revision Petition No.14 of 2017. Undisputedly, the said revision petition was fixed on 18th July 2017, the day on which the revision petitioner remained absent and his advocate had represented him before the revisional court. On that date, the present writ petitioner/original complainant, who was respondent in the revision petition, appeared before the revisional court and filed an application for engaging an advocate. Considering his application, on 18th July

2017, the learned Additional Sessions Judge, Palghar, was pleased to adjourn the revision petition to 29th August 2017. It is not in dispute that on 20th July 2017, the revision petitioner/ original accused no.2 and respondent no.2 herein, through his learned advocate moved an application for taking the revision petition on board and it was allowed on 20th July 2017 itself by the learned Additional Sessions Judge, Palghar. Respondent no.2 herein/accused no.2 i.e. the revision petitioner before the Additional Sessions Judge, then moved an application for stay of proceedings in Regular Criminal Case No.120 of 2016 pending before the learned JMFC, Dahanu, on the very same day i.e. on 20th July 2017. Initially, it is seen that the learned Additional Sessions Judge called say of the other side and then he has passed the following order on the application for stay of proceedings on 20th July 2017 itself. The order reads thus :

“Heard. The original complainant has not appeared in the revision application.

His advocate has filed undertaking only. Perused the order below exh.140.

In view of pendency of revision application the

proceeding before the Ld.JMFC is stayed till 29/8/2017.

S/D-

20/7/2017.”

4 Heard the learned advocate appearing for the revision petitioner/original complainant. He argued that without noticing the revision petitioner i.e. the original complainant who was the respondent in the Revision Petition No.14 of 2017, the learned Additional Sessions Judge, Palghar, ought not to have taken the revision petition on board. The learned advocate further submitted that without service of copy of the application for stay on the respondent in the revision petition i.e. the writ petitioner before this court, who was the original complainant, the learned revisional court ought not to have stayed the trial pending before the learned JMFC, Palghar, particularly in the light of order dated 16th June 2017 passed in Bail Application No.75 of 2017 by which the trial was made time bound.

5 I have also heard the learned APP as well as the learned advocate appearing for respondent no.2 herein i.e. revision petitioner/original accused no.2. By drawing my attention to the impugned order dated 20th July 2017, the learned advocate argued that the order of stay was till 29th August 2017. As such, the present writ petition is rendered infructuous. Upon being asked, the learned advocate for respondent no.2 herein, has stated that, that stay is further continued by the revisional court by a fresh order.

6 I have considered the rival submissions and also perused the impugned order as well as other documents placed on record. Audi alteram partem is the basic principle of natural justice which is blatantly flouted by the revisional court in the case in hand. It becomes crystal clear that on 18th July 2017, the writ petitioner who was the respondent in Revision Petition No.14 of 2017 had appeared before the revisional court and moved an application for engaging an advocate, which has resulted in adjourning of revision petition to 29th August 2017. Abruptly,

without service of application for taking the case on board on the writ petitioner herein i.e. respondent no.2 in the revision petition, the application for taking the revision petition on daily board of 20th July 2017 came to be filed and it was unwarrantedly allowed by the learned Additional Sessions Judge, Palghar. Infact, the application ought not to have been allowed without service of the same on the writ petitioner i.e. the respondent therein, who was the original complainant, in the wake of the fact that he had appeared before the court on 18th July 2017. Be that as it may, further illegality committed by the revisional court is also seen from entertainment of stay application filed by respondent no.2 herein i.e. the revision petitioner/accused no.2. Infact, the revisional court ought to have directed the revision petitioner/respondent no.2 to serve a copy of stay application Exhibit 5 moved by respondent no.2 herein i.e. revision petitioner on the original complainant i.e. respondent in the revision petition, he being the original complainant, and further orders could have been passed only after hearing the writ petitioner i.e. the respondent in the revision petition. However, this was not done

and proceedings in the trial court came to be stayed, that too, with an unreasoned order. As principles of natural justice are blatantly violated by the revisional court, the impugned order cannot be sustained. The learned revisional court ought not to have directed the continuation of stay subsequently also as the original order of grant of stay was without hearing the respondent therein i.e. the writ petitioner. The practice of resorting to the tactics of taking the case on board without serving copy thereof on respondent and asking for accepting application for stay without service of copy on other side so also seeking hearing the application in absence of the respondent in the revision petition, who had earlier appeared before the court ought to have been deprecated by the learned Additional Sessions Judge, Palghar. The learned revisional court ought to have been alive to the fact that the trial was expedited by the Additional Sessions Judge, Palghar, himself, vide order dated 16th June 2017, and as such, instead of passing the interim order, he ought to have decided the revision petition by seeking appearance of parties by noticing them on the application for taking the revision petition on board.

7 In this view of the matter, as the impugned order is passed in violation of principles of natural justice, the same is quashed and set aside. Rule is made absolute accordingly.

8 Registry is directed to forward a copy of this order to the Principal District Judge of the concerned district, so also to the learned Additional Sessions Judge, who has passed the impugned order; for their notice, so that such a situation is avoided in future.

(A. M. BADAR, J.)