

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPP) NO. 70/2017
IN CRIMINAL APPLICATION (APL) NO. 650/2016.

Smt. Monita Arjun Ellarkar and others.

-VERSUS-

State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B. P. DHARMADHIKARI
& KUM. INDIRA JAIN, JJ.

DATE : JUNE 09, 2017.

Heard learned counsel for the parties.

2. Prayer is to review/recall order dated 14.12.2016 in Criminal Application No. 650/2016. On that date this Court rejected the request of counsel for adjournment on the ground that remedy of revision under Section 397 of Criminal Procedure Code is available to the applicants.

3. Accordingly after giving opportunity to the applicants to take such other steps as are open to them in law, Criminal Application No. 650/2016 was

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disposed of.

4. The prayer to grant review application and for review / recall of that order is supported by judgment of Hon'ble Supreme Court in case of **Prabhu Chawala .vrs. State of Rajasthan and another (2016 (4) Crimes 435 (SC))**. The other judgments in which that judgment has been followed are also relied upon. Learned counsel for the applicants has read out the averments in paragraph nos. 4 and 5 of the Criminal Application No. 70/2017.

5. Learned A.P.P. appearing on behalf of non-applicant no.1 and learned Counsel appearing for non-applicant no.2 are opposing the prayer. They submit that effort is to have review of orders passed on 14.12.2016, and hence application is liable to be dismissed. Support is being taken from judgment of Hon'ble Supreme Court reported at **AIR 2001 SC 43 (Hari Singh mann .vrs. Harbhajan Singh Bajwa and others)**. They further urge that opportunity was extended on 14.12.2016 and this Court has refused to grant adjournment.

6. Perusal of the order dated 14.12.2016 shows that the counsel for the applicants sought

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adjournment on the ground that an outstation counsel was to argue Criminal Application No.650/2016. We have rejected that request and thereafter accepted the contention that remedy of revision under Section 397 is available to the applicants in that matter.

7. The judgment cited by the learned counsel for the applicants shows that availability of revisional jurisdiction under Section 397 of Criminal Procedure Code is not a bar to exercise of jurisdiction under Section 482 of Criminal Procedure Code. Our order dated 14.12.2016 also does not say so. On the contrary after rejecting adjournment, instead of proceeding to dismiss the matter in default, we held that alternate remedy was available.

8. In this situation, it is apparent that there is no question of any review of the said order dated 14.12.2016. The application as filed is erroneous, it is therefore, dismissed. No costs.

JUDGE**JUDGE**

Rgd.