

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.391 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 392 OF 2018**

1. Shri Saikurpa Sugar and Allied Industries Ltd., At Post: Hiradgaon, Tq.Shrigonda, Dist.Ahmednagar.
Through its Managing Director
Shri Rajkumar S/o Sudamrao Dhamdhere.
2. Rajkumar S/o Sudamrao Dhamdhere,
Age:54 years, Occu:Service as Managing Director, Shri Saikurupa Sugar and Allied Industries Ltd., At Post: Hiradgaon, Tq.Shrigonda, Dist.Ahmednagar.
3. Vikram S/o Babanrao Pachpute,
Age 34 years, Occu.Agril. and Chairman Shri Saikrupa Sugar and Allied Industries Ltd., At Post: Hiradgaon, Tq.Shrigonda, Dist.Ahmednagar.

... Petitioners

VERSUS

1. Mula Sahakari Sakhar Karkhana, Sonai, Tq.Newasa, Dist.Ahmednagar
Through its Authorised Officer,
In-charge Chief Accountant,
Tukaram S/o Rajaram Raut,
Age:58 years, Occu:Service,
R/o Sonai, Tq,Newasa,
Dist. Ahmednagar.

... Respondent

Mr. Vikram S. Kadam, Advocate for the petitioners
Mr. V. D. Sapkal, Advocate for the respondent.

CORAM : K. L. WADANE, J.

DATE : 3rd April, 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith. With the consent of the parties, the matters are taken up for final hearing.

2. Petitioner No.1 is a private limited company, registered under the Companies Act. Petitioners No. 2 and 3 are Managing Directors and Chairman of the said company, respectively. The respondent is original complainant in SCC Nos.37/2016 and 38/2016, pending before the 2nd Judicial Magistrate, First Class, Newasa.

3. The respondent/original complainant filed affidavit of evidence of one Tkaram Raut in both the matters at Exh. 34 and Exh. 32 respectively. The petitioners cross examined the said witness and after completion of evidence, the matter was adjourned to 4h January, 2018. Examination in chief and cross examination of the said witness was over on 11.12.2017. On 4th January, 2018, the respondent has filed applications Exh.69 and Exh.67 for correction of the said deposition recorded in both the matters. After

hearing both the sides, the learned Magistrate has allowed Applications Ex.69 and 67 and has corrected certain sentences recorded in the deposition.

4. Mr. Kadam, the learned counsel for the petitioners in both the petitions has submitted that the evidence of the witness was over on 11.12.2017 and subsequently, on 4th January, 2018, applications were given for correction of the deposition. By referring the dates, Mr. Kadam argued that it is not possible for the Magistrate to remember each and every sentence recorded by him long back on 11.12.2017.

5. Mr. Sapkal, the learned counsel for the respondent, by referring to the evidence recorded in para 4 of the cross examination, has pointed out that it is a clear typographical mistake. He has referred the earlier suggestion and subsequent suggestion and by referring this evidence, has submitted that the evidence to the extent of sentences corrected is a typographical mistake and that can be corrected.

6. On perusal of the record, it appears that after completion of cross examination of the witness, the learned trial court has not read over the deposition

to the witness and therefore, the learned Magistrate has not followed the provisions of section 278 of the Cr.P.C. If the Magistrate would have read over the deposition to the witness immediately, the concerned witness could have pointed out the correctness or incorrectness of the evidence led by him. Here, in the present matter, there was no opportunity given to the witness to say about the correctness of his evidence recorded in the matter. This mistake is occurred because the concerned Magistrate has not followed the provisions of section 278 Cr.P.C.

7. Looking to the dates of recording of cross examination of the witness and submission of the applications for correction of deposition, it is impossible for the learned Magistrate to remember each and everything which was recorded on previous date i.e. before 24 days. Therefore, opportunity must be given to the witness to explain whether there is typographical mistake while recording his deposition or otherwise.

8. In view of the above, the impugned orders are quashed and set aside.

9. The matters are remanded to the trial court. The trial court shall call upon the concerned witness and thereafter shall follow the provisions of section 278 Cr.P.C. and dispose of the matters in accordance with law.

10. Rule is made absolute accordingly. No costs.

(K. L. WADANE, J.)

JPC