

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

CRIMINAL WRIT PETITION NO. 1580 OF 2016

Vikas Pralhad Tonde

Age: 29 yeas, Occu.: Agri.,
R/o Takarwadi, Tq. Majalgaon,
Dist. Beed.

..PETITIONER

VERSUS

1. State of Maharashtra

2. Sanjivani Vikas Tonde

Age: 26 years, Occu.: Housewife,
R/o Khorl tanda (Rajewadi),
Tq. Majalgaon, Dist. Beed.

3. Bandu Sopan Tidke

Age: Major, Occu.: Agri.,
R/o Khorl tanda (Rajewadi),
Tq. Majalgaon, Dist. Beed.

4. Bhagirathibai Sopan Tidke

Age: 60 years, Occu.: Household,
R/o Khorl tanda (Rajewadi),
Tq. Majalgaon, Dist. Beed.

5. Baliram Rangrao Dake

Age: 41 years, Occu.: Household,
R/o Takarwadi, Tq. Majalgaon,
Dist. Beed.

..RESPONDENTS

Mr. P.N. Muley, Advocate for petitioner.

Mr. A.S. Shinde, A.P.P. for respondent no.1 - State.

Mr. A.A. Nimbalkar, Advocate for respondent no.5.

CORAM : SANGITRAO S. PATIL, J.

DATE : 29th AUGUST, 2018

ORAL JUDGMENT :-

Rule, made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner has challenged the judgment and order dated 20th February, 2016 passed in Criminal Revision Application no. 16 of 2014 by the learned Additional Sessions Judge, Majalgaon, whereby the orders passed by the learned Judicial Magistrate First Class (2nd Court), Majalgaon dated 09th October, 2013 and 13th February, 2014 in R.C.C. No. 217 of 2013 came to be quashed and set aside.

3. The petitioner filed a complaint before the learned Magistrate against respondent nos. 2 to 5 for the offences under Sections 493, 324, 328, 506 read with Section 34 of the Indian Penal Code. Initially, the learned Magistrate passed an order and directed the police to conduct investigation and submit the report. However, he again passed one more order and directed the police to carryout the investigation vide Section 156(3) of the Code of Criminal Procedure ("Code" for short). The said orders

were challenged by respondent nos. 2 to 5 by filing the above numbered criminal revision application. The Revisional Court found substance in the contentions raised by respondent nos. 2 to 5 and held that the orders passed by the learned Magistrate were not legal, proper and sustainable. He, therefore, allowed the criminal revision application and quashed and set aside the said orders.

4. The learned Counsel for the petitioner submits that it was on the complaint filed by the petitioner that the above mentioned orders were passed by the learned Magistrate. The petitioner was the aggrieved person. He should have been made a party to the criminal revision application. However, without making him a party and giving him an opportunity of hearing, the Revisional Court quashed and set aside the said orders, causing a great prejudice to the petitioner. He, therefore, prays that the impugned judgment and order passed by the learned Additional Sessions Judge, Majalgaon may be quashed and set aside.

5. The learned Counsel for respondent no. 5 strongly opposed the petition. He submits that it was not at all necessary to hear the petitioner/complainant for quashing and setting aside the order passed by the learned Magistrate before the Revisional Court. In support of his contention, he cited the judgment in the case of **Radha Devi Vs. Shafiq @ Shafaq & Ors. 2003 DGLS (Cri) Soft 87**. He submits that the petitioner was represented by the learned A.P.P. before the Revisional Court. There was no prejudice caused to the petitioner, since his case was put forth by the learned A.P.P. He, therefore, supports the impugned judgment and order and prays that the criminal writ petition may be dismissed.

6. In the case of **Radha Devi (supra)**, it would be clear from paragraph no.2 of the judgment that the prosecution was initiated on the basis of the F.I.R. lodged by the petitioner therein. In the circumstances, it being a State case, it was not necessary to hear the petitioner/informant prior to considering the prayer of the accused for discharge. In my view, the said judgment would

not be helpful to respondent nos. 2 to 5 in this case, since in the present case, the prosecution has been initiated on the basis of the complaint filed by the petitioner as defined under Section 2(d) of the Code and not on the basis of the F.I.R. lodged under Section 154 of the Code. The petitioner was an aggrieved person. Had the complaint been dismissed under Section 204 of the Code, the petitioner alone would have been the aggrieved person, who could have challenged the order by filing the revision application. In the circumstances, deciding the revision application, without extending the petitioner an opportunity of hearing, certainly would cause prejudice to him.

7. In the circumstances, the impugned judgment and order cannot be upheld. They will have to be quashed and set aside. The criminal revision application will have to be remanded for being decided afresh after extending the petitioner an opportunity of hearing. In the result, I pass the following order :-

ORDER

(I) Criminal Writ Petition is allowed.

(II) The impugned judgment and order dated 20th February, 2016 passed in Criminal Revision Application no. 16 of 2014 are quashed and set aside.

(III) Criminal Revision Application is remanded to the learned Additional Sessions Judge, Majalgaon for being decided afresh, after giving the petitioner an opportunity of hearing.

(IV) All the controversial issues are kept open.

(V) The learned Additional Sessions Judge, Majalgaon shall hear the parties afresh and decide the criminal revision application on merits.

(VI) The petitioner and respondent nos. 2 to 5 shall appear before the Revisional Court on 14th September, 2018 positively.

(VII) The Revisional Court shall decide the revision application as expeditiously as possible and in any case within three months from 14th September, 2018.

(VIII) Rule is made absolute.

(IX) Criminal Writ Petition is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE

SSD