

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 430 OF 2018

Kevalchand Bhikamchand Jain .Petitioner

Vs.

The State of Maharashtra & ors. .Respondents

Mr. Ganesh K. Gole, Advocate, for the Petitioner
Mr. V. Chate, APP, for the Respondent No. 1 – State
Mr. Prakash Mahadik, Advocate, for the Respondent Nos. 2 to 8

CORAM : REVATI MOHITE DERE, J.

DATE : 05.02.2018

P.C.

. Heard learned counsel for the parties.

2. Learned counsel for the Petitioner states that there is non-compliance of Section 138 of the Code of Criminal Procedure (for short 'Cr.P.C.'). He submitted that since the order passed by the Sub-Divisional officer was under Section 133 of Cr.P.C., it was incumbent for the Sub-Divisional officer to follow the procedure set out in Section 138 of Cr.P.C.. Learned counsel submits that the Revisional Court was pleased to reject the Application (Exh. 5) for stay of the order passed by the Sub-Divisional officer, vide Order dated 23.01.2018. It is this order which is impugned in this present Petition.

3. Perused the papers. It is not in dispute, that the main Revision Application is pending before the learned Additional Sessions Judge, Mangaon, District – Raigad. It is also not in dispute, that the Petitioner has filed R. C. S. No. 5 of 2018 and has sought declaration as well as perpetual injunction in the said suit. Be that as it may, it is always open for the Petitioner to move the Civil Court and seek appropriate interim orders. As far as the Order dated 23.01.2018 passed by the learned Additional Sessions Judge, Mangaon, District – Raigad, by which the Petitioner's Application i. e. Exh. 5 for staying the proceedings is concerned, no interference is warranted in the impugned order, at this stage, since the Revision Application is pending and as the hearing of the said Revision Application is being expedited.

4. It is made clear, that the Revisional Court shall decide the Revision Application as expeditiously as possible and in any event within three weeks from today, on its own merits, uninfluenced by the dismissal of this Petition or the interim order passed below Exh. 5. All contentions of all parties are kept open, including the grounds raised in this Petition.

5. The order passed by the Sub-Divisional officer shall not be

executed for a period of three weeks from today, to enable the Applicant to file an appropriate Application in the pending Civil Suit.

6. Accordingly, the Petition is dismissed.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)