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

WRIT PETITION NO.2905 OF 2017

Rani Mohanlal Shahani	... Petitioner
Versus	
Ajit Hariram Lakhani and Anr.	...Respondents

Mr.Abhinav Chandrachud i/b Mr.Subir Sarkar, for the Petitioner.

Mr.Ajit Hariram Lakhani, Respondent No.1 is present in Court.

Mr.S.R.Shinde, A.P.P for the Respondent No.2-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 2nd FEBRUARY, 2018

P.C. :

1. Heard learned counsel for the petitioner and the respondent No.1, who appears in person.

2. By this petition, the petitioner seeks expunging of the remarks made by the learned Chief Judicial Magistrate, Thane in para 8 of the order dated 6th July, 2017, as well as seeks quashing and setting aside of the order imposing costs of Rs.10,000/- on the petitioner, payable to DLSA, Thane.

3. Learned Counsel for the petitioner submitted that the observation 'It is a gross abuse of the process of law' made by the learned Magistrate in para 8 of the order was uncalled for, as at no point of time, the petitioner had delayed the proceedings. He submits that the Roznama shows that out of the 53 dates, the petitioner was present in the Court on almost 48 days. He submitted that in the facts of the case, the observation made in para 8 of the order and the costs imposed by the learned Magistrate was uncalled for and unjustified. He submitted that the petitioner has always co-operated with the case and is also ready to file an undertaking in this Court that she will proceed with the case and ensure that the said case is decided as expeditiously as possible.

4. The respondent no.1, who appears in person, opposes the petition. He submitted that no interference is warranted in the impugned order. He submitted that the learned Magistrate has observed that on 4th November, 2015, the petitioner was directed to lead evidence and that the petitioner has not entered the box and is only insisting for cancellation of bail and it is, in this context, that the learned Magistrate made the observation and hence the same should not to be expunged.

5. Perused the papers as well as the impugned order. It appears that there are several disputes/cases between the petitioner and the respondent no.1, including the present case i.e. S.C.C.No.901 of 2016. A perusal of the Roznama shows that on almost all dates i.e. about 48 dates, out of 53 dates, the petitioner was present in the Court. Although, the matter is shown in the Roznama for recording evidence, *prima facie*, there is nothing to show that the matter was delayed due to the absence of the petitioner, at any point of time or due to her refusal to step in the witness box. Under these circumstances, the observation made by the learned Magistrate that 'It is a gross abuse of the process of law' was uncalled for and unwarranted. Similarly, the imposition of cost of Rs.10,000/- payable to DLSA, Thane, was also unwarranted.

6. Learned Counsel for the petitioner during the course of the hearing has tendered an undertaking of the petitioner. The same is taken on record and marked 'X' for identification. By the said undertaking, the petitioner assures that she will proceed with the case expeditiously, as and when the matter is kept by the learned Magistrate, unless prevented by unavoidable circumstances i.e. medical exigency or exigencies beyond her

control. The filing of the undertaking shall not be used by the Respondent No.1 as against the petitioner, to show that the petitioner is not co-operating with the case. Infact, the undertaking is filed by the petitioner, only to show her bonafides and that she is anxious to proceed with the case.

7. The Petition is accordingly allowed. The sentence in para 8 of the impugned order dated 6th July, 2017, passed by the learned Chief Judicial Magistrate, Thane, which reads thus:- 'It is a gross abuse of the process of law', stands expunged from para 8. The cost imposed on the petitioner is also quashed and set aside.

8. Needless to state, that the order rejecting the petitioner's application for cancellation of respondent no.1's bail, stands as it is. Since, both the parties want the matter to be expedited, the matter is expedited. Both, the petitioner and the respondent no.1 assure to co-operate with the learned Judge in the expeditious disposal of the case and state that they will not seek un-necessary adjournment, unless exigencies so demand.

9. Accordingly, the Trial Court shall dispose of the case, as expeditiously as possible and in any event within 12 months from the date of receipt of this order.

10. The Petition is allowed in the aforesaid terms and is accordingly disposed of.

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

REVATI MOHITE DERE, J.