

under the application of the petitioner as filed under section 127 of Cr. P.C. reads thus:

“Heard both the sides.

As the main petition is filed under section 125 in the same application.

This application is not tenable accordingly is rejected.”

3. A perusal of the order indicates that the learned trial judge has completely overlooked the provision of section 127 of Cr. P.C. and the object of permitting the litigants to approach the court by an application under section 127 of Cr. P.C. on change of circumstances which can be invoked after an order under section 125 of Cr. P.C. is passed. The impugned order dated 14.7.2017 does not deal on the merits of the petitioner's application. The order of a such nature as passed by the trial court could not have been passed on such application. It was necessary for the learned trial judge to render a decision on merits of the application.

4. Though the respondent is not present, however as the impugned order is ex-facie and inherently illegal, and that the respondents would have an opportunity to be heard by the trial court on the petitioner's application under section 127 of Cr. P.C., there is no impediment for this court to pass a final order on this petition.

5. Accordingly, petition is allowed in the following terms:-

ORDER

(i) The impugned order dated 14.7.2017 as passed by the learned trial judge on the application of the petitioner as filed under section 127 of Cr. P.C. is quashed and set aside.

(ii) The learned trial judge shall take up an application of the petitioner under section 127 of Cr. P.C. and after hearing the parties on the merits of the application, decide the same in accordance with law.

(iii) It is clarified that the order dated 5.11.2015 passed under section 125 of Cr. P.C. is in no manner disturbed, and this order is no expression on the merits of the rival pleas which would fall for consideration of the learned trial judge in the application as filed under section 127 of the Cr. P.C.

6. Petition is accordingly allowed in the above terms. No costs.

(G.S. KULKARNI, J.)