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

WRIT PETITION NO.5020 OF 2017

Thakarchand Bhikchand Punmiya	...Petitioner
Versus	
The Chief Commissioner of Income-Tax, Thane and Ors.	...Respondents

Mr.G.A.Tambe, for the Petitioner.

Mr.S.V.Walve, for the Respondent No.1 – Income Tax.

Ms.R.M.Gadhvi, A.P.P for the Respondent No.3-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th JANUARY, 2018

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioner has impugned the order dated 15th September, 2017, passed by the 3rd Additional Chief Judicial Magistrate, Thane, below Exhibit-98 in RCC No.106 of 1992, as well as the order dated 11th October, 2017 passed by the learned Additional Sessions Judge 05, Thane, in Criminal Revision Application No.179 of 2017.

3. Learned Counsel for the petitioner submits that the learned Magistrate could not have altered the order dated 20th July, 2017, in view of Section 362 of Code of Criminal Procedure. He submitted that alteration of the word 'complaint' in the final order would change the complexion of the case.

4. Learned Counsel for the Respondent No.1-Income Tax opposed the petition. He submitted that no interference is warranted in the impugned order.

5. Perused the papers. It appears that the petitioner had filed an application (Exhibit – 93) and had sought dismissal of the complaint on the ground that the complainant was absent in the said case for about 15 years. The said application i.e. Exhibit – 93 was opposed by the Income Tax Authorities. The learned Magistrate after hearing the parties was pleased to reject the said application. It appears that inadvertently in the operative part of the order dated 20th July, 2017, it is stated that 'the present complaint shall stand rejected, instead of 'the present application shall stand rejected. Considering the error that had cropped up in the operative part of the order

dated 20th July, 2017, the Income Tax Authorities filed an application under Section 362 Cr.PC for correction of the said operative part of the order. The learned Magistrate observed that the word rejected was for the 'application' and not for the 'complaint' and that it was inadvertently typed as 'complaint' and accordingly allowed the application and the word 'application' was substituted in place of the word 'complaint' in the operative part of the order dated 20th July, 2017. The said order was confirmed by the Revisional Court. On the face of it, the error is an inadvertent error as is evident from para 4 of the order dated 20th July, 2017, wherein the learned Magistrate has observed as under:

“.....Under the circumstances, I find that, the present application deserves to be disallowed.....”

6. No infirmity can be found in the impugned order passed by the learned Magistrate and confirmed by the Revisional Court warranting interference in writ jurisdiction.

7. Accordingly petition is dismissed.

REVATI MOHITE DERE, J.