

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1962 OF 2018

IN

CRIMINAL APPEAL NO.420 OF 2013

UNION OF INDIA

)...APPLICANT

V/s.

OKOCHA MIKE AND ANOTHER

)...RESPONDENTS

Mrs.Anuradha Mane, Advocate for the Applicant.

Mr.Ayaz Khan, Advocate for the Respondent No.1

Mrs.M.R.Tidke, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 6th DECEMBER 2018

P.C. :

1 The appellant is convicted of offences punishable under Sections 21(c) read with 8(c) read with 28 read with 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and he has been sentenced to suffer rigorous imprisonment for 13 years apart from imposition of fine of Rs.1 lakh, and in default, he is

directed to undergo simple imprisonment for 6 months. Undisputedly, the appellant/accused is behind bars for more than 9 years. In the matter of Hussain and Another vs. Union of India¹ the Hon'ble Supreme Court has directed to forthwith hear all the appeals in which the appellant/accused has undergone jail sentence of more than 5 years.

2 This criminal appeal was listed for final hearing on 27th September 2018 and following order was passed at the request of the learned advocate for the respondent no.1 :

“At the request of Ld.Advocate for R.No.1, stand over to 05/10/2018.”

3 On 5th October 2018, as the learned Advocate appearing for respondent no.1 - Union of India, which is the prosecuting agency in the appeal, was absent, the court had passed the following order :

“1 This Court is noticing since long that nobody is representing the Intelligence Officer of

¹ 2017(5) SCC 702

Customs, Air Intelligence Unit, C.S. International Airport, Sahar, Mumbai, who is the respondent No.1 herein. Somebody keeps information with the Sheristadar of this Court that the concerned counsel is busy in some other matter and that is how adjournments are sought in this matter.

2 Considering the old pendency of the appeal, this Court is trying to take up the appeal for final hearing despite repeated insistence on the part of the learned counsel for the appellant to decide the bail application preferred by the appellant.

3 It appears that the respondent No.1/prosecuting agency viz. Intelligence Officer of Customs, Air Intelligence Unit is handling the matter very casually and negligently. There is no seriousness in prosecuting the instant appeal or bail application by the respondent No.1/prosecuting agency.

4 Today, nobody represented the respondent No.1/prosecuting agency i.e. Intelligence Officer of Customs, Air Intelligence Unit. The Sheristadar of this Court informs that one Mr. W.V. Gaikwad claiming to be an advocate has informed her that Mrs. Mane, Advocate is appearing for respondent

No.1/prosecuting agency and she is not available.

5 The Registry is directed to send the copy of this order to the respondent No.1/prosecuting agency in order to enable it to engage suitable counsel to represent it before this Court. It is made clear that if on the next date of hearing, the learned counsel for respondent No.1/prosecuting agency fails to appear before this Court, then the appeal shall be heard and decided without any further waiting for the learned counsel for respondent No.1/prosecuting agency.

6 The Registry to take follow up action immediately.

7 In this view of the matter, stand over to **26th October 2018.**”

4 In order to grant one more chance of hearing to the prosecuting agency in this appeal, it was adjourned to 26th October 2018. However, on 26th October 2018 also, nobody appeared for respondent no.1 – Intelligence Officer of Customs, Air Intelligence Unit, Mumbai. Hence, the following order was passed :

“1 Despite Order dated 5th October 2018, none appeared for the respondent No.1 when the appeal is called out for final hearing.

2 In this view of the matter, it is seen that the prosecuting agency i.e. Union of India through Intelligence Officer of Customs, Air Intelligence Unit is not interested in defending this appeal. Therefore, the appeal will have to be heard on the basis of submissions advanced by the learned counsel appearing for the appellant as well as the record of the learned trial Court. Therefore, put up for 'Final Hearing' in the week commencing from 19th November 2018.”

5 The appeal was adjourned for final hearing in the week commencing from 19th November 2018 with the hope that atleast on that day somebody will represent the respondent no.1/prosecuting agency. However, nobody represented the respondent no.1 even on that day. Thereafter, the appeal was finally heard on 21st November 2018 and 22nd November 2018. The following order was passed on 22nd November 2018, noting absence of the learned advocate appearing for respondent no.1/prosecuting agency :

“1 The appellant in the case is undergoing jail sentence for more than 9 years. This appeal is finally heard on 21st November 2018 and 22nd November 2018. Today, Mr.Ayaz Khan has concluded his arguments.

2 This appeal is reflecting apathy on the part of the prosecuting agency/respondent no.1 in defending the appeal. Despite repeated efforts by this court to secure presence of the learned counsel appearing for the respondent no.1 Union of India, nobody is appearing to represent the respondent no.1 Union of India in this matter. Neither yesterday nor today the learned counsel for the respondent no.1 appeared before this court.

3 On 5th October 2018 this court was required to pass a detailed order mentioning non-cooperation by respondent no.1 in final hearing of this appeal. Copy of that order was sent to the respondent no.1. It was made clear in that order that if the learned counsel for the respondent no.1 fails to appear before this court, the appeal shall be heard and decided without further waiting for the learned counsel for the respondent no.1/ prosecuting agency. The appeal was

adjourned to 26th October 2018. On 26th October 2018 also nobody appeared for the respondent no.1, and therefore, the appeal was put up for final hearing in the week commencing from 19th November 2018. As on 19th November 2018 nobody appeared before this court, the matter was kept part heard. Today, the arguments on behalf of the appellant are concluded. Still nobody represented the respondent no.1. Hence, closed for judgment.”

That is how, the appeal was closed for hearing.

6 Subsequently, the respondent no.1 has preferred the instant application bearing no.1962 of 2018 for listing the appeal again for final hearing with permission to argue the matter for the respondent no.1. Neither in the instant application nor in the affidavit filed today any reason is mentioned for not making alternate arrangement for working out the appeal, though this court had made it categorically clear in the order dated 5th October 2018 that adjournment will not be granted subsequently. Even a copy of the said order was served on the respondent no.1

through the Registry of this court. Strange submissions are made in the affidavit to the effect that on 26th October 2018 the advocate representing the respondent no.1 was to attend urgent remand before the court of the learned Judicial Magistrate First Class, Vashi, and therefore, this appeal remained unattended. It is not understood whether such a ground of being busy before the learned Judicial Magistrate First Class can be an excuse for avoiding hearing of the appeal in which the appellant/accused is undergoing jail sentence for more than 9 years. The respondent no.1 is not a private litigant. It is Union of India having battery of lawyers. Why alternate arrangement was not made to work out the appeal is not made clear.

7 Be that as it may, in order to have fair decision in the matter, I am of the considered opinion that despite all lapses on the part of the respondent no.1 in conducting the matter, one more opportunity needs to be granted to it. This court was intending to impose costs on the respondent no.1 because of callous attitude shown in working out the matter and the strange

reason of being busy before the learned Judicial Magistrate First Class is being made for avoiding hearing of this appeal in which the appellant/accused is undergoing jail sentence for more than 9 years. However, I feel that this would be the last time that such conduct is shown by the responsible authority of the Central Government, by taking a lesson from this matter.

8 In this view of the matter, the application is disposed of with a direction to the Registry to re-fix the appeal for final hearing in the week commencing from 10th December 2018.

9 It is also made clear that no further adjournment on any pretext shall be granted to the respondent no.1 in this matter.

(A. M. BADAR, J.)