

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISC. APPLICATION NO.101 OF 2019.
IN
STAMP NUMBER MAIN NO.2794 OF 2018.

UNION OF INDIA,
THR. LORETTA SHREEDHARAN, ... Applicant.
Versus
ISMAIL USMAN AND ANR. ... Respondents.

Ms. A. Desai, Advocate for the applicant.
Mr. S. Sardesai, Advocate for the respondent no.2.

Coram:- PRITHVIRAJ K. CHAVAN, J.
Date:- 24th July 2019.

ORAL ORDER

Ms. A. Desai, learned Counsel for the applicant seeks leave of this Court to withdraw the Criminal Appeal and present it before the appropriate Court as per law. In support of her contention she has placed reliance on the judgment of this Court in the case of *Aires Rodrigues Vs. State*¹ The learned Single Judge of this Court has discussed the scope of Section 482 of Cr.P.C. Paragraphs 10 and 13 of the judgment read thus:-

10. Section 482 of the Code does not confer any inherent powers on the High Court. It only saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or

¹ 2010 LawSuit(Bom) 270

to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In other words Section 482 of the Code does not confer any new powers on the High Court, but it merely safeguards all existing inherent powers possessed by High Court necessary, amongst other purposes, to secure the ends of justice. The section provides that these powers which the Court inherently possesses shall be preserved lest it be considered that the only powers possessed by the Court are those expressly conferred by the Code and no inherent powers have survived after the passing of the Code. Likewise, Section 151, CPC (Code of Civil Procedure, 1908) saves inherent powers of the Civil Courts and it provides that nothing in that Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Here again, it may be stated that Section 151 of the CPC does not confer any new powers on the Courts under the Code of Civil Procedure, 1908 but only saves what is inherent in a Court, to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

13. *Converting an appeal into revision is a procedural aspect, as stated in Mahesh Kumar V/s. State (supra). Rules of procedure, whether criminal or civil, must serve the higher purpose of justice (see AIR 1958 SC 376). Every Court, from the very nature of its organization cannot be denied certain powers, which from the very nature of its organization are essential to its existence and protection and due administration of justice. These are incidental to its very existence and such procedural powers can always be resorted to unless specifically prohibited by any of the provisions of the Code. In other words, we need to be reminded that*

every Court is a court of justice also and should not feel helpless in matters of procedure only because there is no specific provision made in that regard in the Code. We cannot expect the Criminal Courts to fold their hands and show their helplessness in matters of Procedure, whenever the Code is found silent. As already observed the Code was not enacted to meet each and every situation which may arise in future. Therefore, in my view Criminal Courts in matters of procedure are required to act on the principle that every procedure is permissible unless it is shown to be prohibited by the Code.

2. On the other hand, the learned Counsel for respondent stressed for dismissal of the appeal as it has been filed before wrong forum which ought to have been filed before the learned Sessions Judge. In support of his contention, he placed reliance on the judgment of this Court in the case of ***Sashikala s/o Ghanshyam Gaikwad Vs Moresh Eknath Jambhulkar and anr.***² . Paragraphs 5 and 6 of the judgment read thus:-

5. *I have gone through these Judgments. It is not necessary for me to make detailed reference to the facts in these cases since in my opinion the ratio laid down in the said Judgment is clearly not applicable in the present case.*
6. *Chapter XIX of the Code of Criminal Procedure deals with the trial of warrant cases by Magistrates. Sections 213 to 215 deals with the procedures to be adopted by the Magistrate while dealing with the warrant case.*

² 2004(4) Mh. L. J. 1126

Section 245 clearly provides that;

'245. When accused shall be discharged - (1) If, upon taking all evidence referred to in Section 244, the Magistrate consider, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.'

It is also pertinent to note that Section 248 of the Code of Criminal Procedure provides that in case the charge has been framed against the accused and the Magistrate finds the accused not guilty, he shall record an order of acquittal and in case he holds him guilty then he shall hear him on the point of sentence. In my opinion, the scheme of Chapter 19 is very clear. An order passed under Section 245 of the Code of Criminal Procedure is an order of discharge and by no stretch of imagination it could be said to be an order of acquittal. At this stage, it is pertinent to note that what is the scope of Section 245 has been decided by the Judgment of the Apex Court reported in : 1996CriLJ2448 , State of Maharashtra vs. Som Nath Thapa. In the said case the Apex Court considered the scope of the provisions concerning framing of charge in respect of Sessions case, warrant case and summons case and this has been considered in paragraph No. 27 of the said judgment. In paragraph No. 32 of the said Judgment, the Apex Court has held that;

'32. The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing charge exists. To put it

differently, if the Court were to think that the accused might have committed the offence it can frame the charge though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into the materials brought on record by the prosecution has to be accepted as true at that stage.'

The impact of the relevant section under the Code of Criminal Procedure dealing with framing of charge has been considered and to that extent the scope of Section 245 stands interpreted by the said decision of the Apex Court. In view of the clear decision of the Apex Court in the case of State of Maharashtra v. Som Nath Thapa AIR 1996 SC 17, the submissions made by Dr. De cannot be accepted. The order passed by the Magistrate discharging the accused under Section 245 of the Code of Criminal Procedure is clearly revisable. In my opinion, the objection taken by the applicant before the Sessions Judge for the maintainability of the Revision Application was without any foundation. In my opinion the present application filed under Section 482 of the Code of Criminal Procedure itself is an abuse of the process of the Court."

3. In the case of **Sashikala s/o Ghanshyam Gaikwad** (supra) it is observed by this Court that Sections 213 and 215 of Cr.P.C. deals with the procedure to be adopted by the Magistrate while dealing with the warrant case. Section 245 of Cr.P.C. contemplates when the accused shall be discharged.

4. In view of the ratio laid down by this Court in case of *Aires Rodrigues* (supra), the High Court can invoke its inherent powers to secure ends of justice and to prevent abuse of process of law. This Court while exercising jurisdiction under Section 482 of Cr.P.C. has given powers to convert an appeal into revision which is a procedural aspect in view of the law laid down in the case of *Mahesh Kumar Vs State*³.

5. As such, liberty is granted to the applicant to withdraw the appeal and to approach the competent court within a period of three weeks from today.

6. The learned Court shall thereafter proceed with the matter as per law.

7. Appeal stands disposed of in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

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³ 1978 CrLJ 390