

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

29 CRIMINAL WRIT PETITION NO.1438 OF 2020

- 1 Sow. Surekha Manik Kore,
Age 49 yrs., Occ. Household,
- 2 Manik Tatyaram Kore,
Age 62 yrs., Occ. Pensioner,

Both are r/o Kakade Plot,
Shahu Nagar, Osmanabad,
Tq. & Dist. Osmanabad.

... **Petitioners**

... **Versus** ...

- 1 Shubhangi Shivajirao Chavan,
Age 54 yrs., Occ. Agri. & Household,
R/o Datta Colony, DIC road,
Near Swami Hospital, Osmanabad,
Tq. & Dist. Osmanabad.
- 2 The State of Maharashtra
Through Office In-charge
Anand Nagar Police Station,
Osmanabad, Tq. & Dist. Osmanabad.
- 3 Narayan mahadev Todkari,
Age 49 yrs., Occ. Agri.,
R/o Apsinga, Tq. Tuljapur,
Dist. Osmanabad.
- 4 Ramesh Bhalchandra Patil,
Age 52 yrs., Occ. Agri.,
R/o Wadgaon (S),
Tq. & Dist. Osmanabad.

... **Respondents**

...

Mr. Mukul S. Kulkarni, Advocate for petitioners

Mr. A.M. Phule, APP for respondent No.2/State

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07th DECEMBER, 2020.

JUDGMENT :

1 Present petitioners are original accused Nos.1 and 2 in Criminal Miscellaneous Application No.355/2016, which is stated to be later on numbered as Criminal M.A. No.121/2019 (in fact, it is Regular Criminal Case No.191/2019), pending before Judicial Magistrate First Class, Osmanabad. The petitioners have challenged the Judgment and order passed by learned Adhoc Additional Sessions Judge, Osmanabad in Criminal Revision Application No.19/2019 dated 25.08.2020, whereby their revision under Section 397 of the Code of Criminal Procedure came to be dismissed. The writ jurisdiction of this Court has been tried to be invoked under Article 226 read with 227 of the Constitution of India.

2 At the outset, it can be certainly said after reading the impugned Judgment passed by learned Adhoc Additional Sessions Judge, Osmanabad that it is sheer reckless and hyper technical approach by the learned Judge in

exercising her jurisdiction under Section 397 of the Code of Criminal Procedure, 1973.

3 The factual matrix leading to the present petition are that the present respondent No.1-original complainant filed Criminal Miscellaneous Application No.355/2016 against the present writ petitioners and others with a prayer that the accused persons have committed an offence punishable under Section 420, 120(b) read with Section 34 of the Indian Penal Code, and therefore, the case be sent for investigation under Section 156(3) of the Code of Criminal procedure. The complaint was presented on 13.06.2016. The learned Chief Judicial Magistrate by order dated 19.09.2016 rejected the prayer of the complainant to issue directions for investigation to police under Section 156(3) of Cr.PC., and thereafter kept the matter for recording of verification of the complainant. It appears that thereafter the verification was recorded and the matter was sent for inquiry under Section 202 of Cr.PC. The report was submitted by the concerned Police Officer. Thereafter, by order dated 24.02.2019 learned Chief Judicial Magistrate, Osmanabad issued process against accused Nos.1 to 4 for the offence punishable under Section 467, 468, 471, 420 read with Section 34 of the Indian Penal Code. The present petitioners had thereafter filed the said criminal revision challenging the order of issuing process against them by filing the said Revision

Application No.19/2019.

4 It appears that the parties were heard. Present petitioners' Advocate as well as Advocate for respondent No.2 in the revision before Revisional Court filed pursis and written submissions respectively. In his pursis the Advocate for the revision applicants submitted that he had already argued the matter. The learned Adhoc Additional Sessions Judge in her Judgment mentions that a letter was sent to the learned Chief Judicial Magistrate, Osmanabad on 20.01.2020 by her office, in view of her order dated 16.01.2020, calling for the record. It was replied by the learned Chief Judicial Magistrate on 24.01.2020 that Regular Criminal Case No.121/2019 (Shubhangi vs. Surekha) is not pending in his Court. It was also informed that R.C.C. No.121/2019 is between State vs. Amol under Section 279, 337 of the Indian Penal Code and it is pending before Judicial Magistrate First Class, Osmanabad (Court No.1). It has been observed, therefore, by the learned Adhoc Additional Sessions Judge, Osmanabad that the criminal case number has not been properly mentioned and no steps have been taken to that effect, and therefore, it is difficult to call the File from the concerned Court and when they are not party to the proceeding i.e. R.C.C. No.121/2019 they have no right to challenge the order of issuance of process in R.C.C. No.121/2019. The revision petition has been dismissed as not maintainable.

5 Heard learned Advocate Mr. Mukul S. Kulkarni for writ petitioners. Taking into consideration the impugned Judgment it is not even necessary to issue notices to the other side i.e. respondent Nos.1, 3 and 4. Learned APP represents respondent No.2. Learned Advocate Mr. M.S. Kulkarni, representing the writ petitioners, vehemently submitted that when the documents were already filed i.e. the copy of the complaint i.e. M.A. No.355/2016, wherein the present petitioners were clearly shown as accused Nos.1 and 2. Thereafter the impugned order of issuing process against the present writ petitioners was also filed on record, which was passed by learned Chief Judicial Magistrate on 24.02.2019. Still the learned Adhoc Additional Sessions Judge, Osmanabad has taken a view that the present writ petitioners cannot challenge the said order as they are not party to R.C.C. No.121/2019. It appears that the said number has been wrongly mentioned by the learned Advocate representing the present petitioners and it ought to have been 191/2019. Such hyper technical approach has been adopted, and therefore, the justice has been burried. There is absolutely no discussion in respect of merits of the case argued. Once the revision has been admitted it cannot be dismissed by contending that it is not maintainable.

6 At the costs of repetition, it is observed now that it is a sorry state of affairs that when the Courts of Law are expected to do justice and not

to indulge in hyper technical approach; yet, such orders are passed. Here, it is only the question of mentioning of wrong number. There were various ways and means to find out the correct number, which was available to the learned Adhoc Additional Sessions Judge. The Court cannot brush aside that part, on the ground that it is not the Court's job to find out the correct number. If such hyper technical approaches are allowed to be taken by the Courts, then justice would be burried. The documents, which were mandatorily annexed to the revision petition and which should have been seen by the learned Revisional Court, were the complaint, verification and order under challenge. On the complaint/then application under Section 156(3) of Cr.P.C. number is mentioned as 'Criminal M.A. No.355/2016'. It is also appearing on order passed by learned Chief Judicial Magistrate on 19.09.2016, whereby the prayer under Section 156(3) of Cr.P.C. was rejected. The number is also appearing on verification of the complainant. Therefore, a task could have been undertaken by the office of the Chief Judicial Magistrate to see which number has been later on given to Criminal M.A. No.355/2016, after it has been directed to be registered as Regular Criminal Case. Definitely such record is available with the office of Chief Judicial Magistrate. It appears that the number has been mentioned on first page of the complaint but it is illegible. The mistake, that has been, further committed by learned Chief Judicial Magistrate, Osmanabad while issuing

process on 24.02.2019 that he has shown that order, that has been, passed below Exh.1 in R.C.C. No.355/2016, which appears to be wrong number and in the upper part of that order even the M.A. No.355/2016 has also been mentioned. That means, while passing order even the learned Chief Judicial Magistrate, Osmanabad has not taken care to see in which matter he was passing the order.

7 After the Record and Proceeding was called, it appears that the search is made only with the number of R.C.C. No.121/2019 and not by the name of parties. The computer system, basically CIS, which is installed in all the District Courts, gives so many options to get the information in respect of a particular matter. The search can be case number wise, Advocate name wise, party wise etc. Therefore, before writing letter dated 24.01.2020 learned Chief Judicial Magistrate appears to have not directed his staff to have proper search of the Record and Proceedings. Only on the basis of RCC number they have supplied the information that, it is between State and one Amol and the said matter is before Judicial Magistrate First Class, Osmanabad. The information, that was required, has not been searched in that direction and some other information has been supplied. The learned Adhoc Additional Sessions Judge did not take further pains but only verified the status of R.C.C. No.121/2019 herself without guiding properly to the

office of Chief Judicial Magistrate, Osmanabad to have a better search. Everything cannot be left to the parties, when the scope of Section 397 of Cr.P.C. is very much wide and a suo moto cognizance to see correctness of the record of the subordinate Courts can be done, by exercising such power under Section 397 of Cr.P.C. It is also to be noted that the power under Section 397 of Cr.P.C. gives concurrent jurisdiction to the Court of Sessions as well as to this Court. The responsibility on the Court of Sessions is equal to this Court while exercising the power under Section 397 of Cr.P.C. Perusal of Section 397 of Cr.P.C. would clearly show that this Court or any Sessions Judge may call for and examine the record of any proceedings before any inferior Criminal Court, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any proceedings. Therefore, once a revision has been filed and admitted, it has to be decided on merits. It cannot be even dismissed in default. This fact has been reiterated in **Madanlal Kapoor vs. Rajiv Thapar, 2007 Cri.L.J. 4684**. Further, in **Govardhandas Bansal vs. State of Delhi, AIR 2009 SC 878** the Hon'ble Apex Court held that when the Court has admitted the revision, then it implies that it raises some arguable points. Even when a criminal revision is admitted, it cannot be disposed of as withdrawn. It has to be taken to its logical end. Therefore, the Courts may permit corrections of accidental and bona fide mistakes in memo of revision. Further, if there is any mistake committed by

Advocate representing the revision petitioner, then the clients should not suffer. The criminal Courts are also bound to do justice, and therefore, in order to do justice the Courts cannot afford to be hyper technical. Mentioning of wrong number and tracing out the record becoming difficult on the basis of that wrong number, is too hyper technical approach, which has to be deprecated.

8 Further, surprisingly the learned Adhoc Additional Sessions Judge went on to observe that the revision petitioners are challenging the order of issuance of process in R.C.C. No.121/2019, to which they are not party. It can be seen from the documents, those have been produced on record, that the office of the Sessions Judge, where the filing of the revision was accepted never raised any objection regarding maintainability of the revision application. Till the matter had come for the final arguments also the learned Adhoc Additional Sessions Judge had not raised any such point regarding maintainability and had not called upon the Advocate for the revision petitioners to make submission in that respect. Some such points regarding the maintainability cannot be decided without giving an opportunity to the party concerned. The learned Revisional Court further went on to observe that the revision petitioners have no right to challenge the order of issuing process. At the costs of repetition, when the documents were

filed saying that they have been made as an accused and order of issuing process against them has been passed, still how the learned Judge could observe that they do not have any right to challenge the order is mysterious. On that ground the revision has been dismissed as not maintainable.

9 It will not be out of place to observe on the basis of the roznama and especially pursis Exh.8, which was filed by the Advocate for the revision applicant on 16.08.2019, that final arguments have been already submitted on behalf of the revision applicant on 05.08.2019. Roznama of 05.08.2019 does not make a mention to hearing of argument. But then it appears that the report regarding notice of the respondent Nos.3 and 4 was not received. In the petition itself, it was stated that there is no necessity to issue notice to respondent Nos.3 and 4, who are the co-accused. Even at that time learned Sessions Judge erred in issuing notice to respondent Nos.3 and 4. Though the pursis has been filed on 16.08.2019, the order, that has been, passed on the same is only seen and noted. It does not say that a wrong picture has tried to be painted in Exh.8. Still the matter was shown to have been adjourned for notice. In spite of specific mention in revision application as well as in Exh.8 that notice is not required to be issued to respondent Nos.3 and 4, it appears that order has been passed on 20.09.2019 stating that petitioner should take steps against respondent Nos.3 and 4. It appears that,

(though that order is not under challenge) it was passed in mechanical way without application of mind. The present proceeding was under Criminal Procedure Code and the learned Adhoc Additional Sessions Judge has granted unnecessary adjournments to the respondent No.2 for filing say. There is no such procedure contemplated under Cr.P.C. The Judgment also appears to have been delivered after a considerable delay. Such approach is absolutely not proper. A Judge cannot take a short cut to decide a matter. Even if there might be some hurdles or lacunas, those have been left by the parties, the Judge should try to do justice without taking any hyper technical approach.

10 Taking into consideration the above observations, definitely the Judgment and order passed in Criminal Revision by the learned Adhoc Additional Sessions Judge deserves to be set aside. As aforesaid, notice was not issued of this matter to respondent No.1, for the simple reason that she would definitely get opportunity to contest the revision. The revision has been wrongly dismissed on technical ground, it deserves to be restored on the file of learned Sessions Judge, as the respondent No.1 herein will not face any kind of injustice. Further, in order to avoid any other complications after the revision is restored, directions are required to be given to learned Sessions Judge to transfer the said petition to the Court of any other

Additional Sessions Judge.

11 With these observations, following order is passed.

ORDER

1 Writ Petition stand partly allowed.

2 The Judgment and order passed in Criminal Revision Application No.19/2019 by learned Adhoc Additional Sessions Judge, Osmanabad on 25.08.2020 is hereby set aside. The said Criminal Revision Application No.19/2019 is restored on the File of Court of Sessions.

3 Learned Sessions Judge, Osmanabad is directed to transfer the said revision on the File of any other Additional Sessions Judge, working at Osmanabad, for its disposal according to law.

4 The concerned Additional Sessions Judge to give an opportunity to the revision petitions to correct the number of the case in petition.

(Smt. Vibha Kankanwadi, J.)

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