

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 463 OF 2019
IN
CRIMINAL REVISION APPLICATION NO. 493 OF 2003

Rajesh Bhagwan Mishra ... Applicant

V/s.

The State of Maharashtra ... Respondents

Mr. Niranjan Mundargi a/w. Mr. Chandansingh Shekhavat a/w. Mr. Yashowardhan Deshmukh I.by M/s. Parinam Law Associates for the applicant.

Ms. P.P. Shinde-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 26th FEBRUARY 2020

P.C. :

1. The learned counsel for the applicants seeks to amend prayer clause (b). Amendment to be carried out forthwith.
2. The present application is filed by Rajesh Bhagwan Mishra. The applicant herein was convicted vide judgment and order dated 29th November 2002 passed by the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Bombay for the offence punishable under section 386 and 387 read with 34 of Indian Penal Code and sentencing them to suffer rigorous imprisonment for one year and fine of Rs. 5000 in default, to suffer further rigorous imprisonment for three months.

3. Being aggrieved by the judgment and order the applicant herein had filed Criminal Appeal No. 199 of 2002 before the Sessions Judge at Bombay. The learned Sessions Court vide judgment and order dated 23rd September 2003 was pleased to dismiss the appeal. Hence the applicant had filed the Criminal Revision Application No. 493 of 2003 along with co-accused Dinesh Shetty.

4. The Criminal Revision Application was admitted vide order dated 22nd January 2004. The applicant was also enlarged on bail on the same day i.e. 22nd January 2004.

5. That the applicant herein had received a notice from the Additional Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai dated 7th August 2019 informing him that the Revision application is dismissed and the order of the conviction is confirmed and therefore, he should appear before the said Court on 21st August 2019.

6 At that relevant stage, the applicant had learnt that on 23rd April 2008 the Criminal Revision Application was dismissed for want of prosecution and therefore, conviction warrant was issued on 7th August 2009.

7. It appears that the co-accused Dinesh Shetty without consulting the present applicant had filed an application seeking condonation of delay in filing restoration application. The said application was before the Court on 6th July 2012 and report was called as to why there was a delay in issuing conviction warrant. This

Court by an order dated 10th August 2012 directed that no coercive steps be taken against the applicant.

8. On 22nd August 2012 the said application seeking condonation of delay in filing restoration application was not prosecuted as none appeared for the applicant and hence the application was dismissed for want of prosecution. Thereafter, the matter was enlisted on board on 15th October 2012 seeking restoration. The said application was also dismissed for want of prosecution. This court had taken into consideration the conduct of said applicant. Dinesh Shetty had approached the Apex Court and by an order dated 10th February 2014 the Special Leave Petition was dismissed.

9. In view of this, the applicant herein has filed an independent application seeking restoration of the criminal revision application which was dismissed for want of prosecution vide order dated 23rd April 2008. There is a delay of 4142 days in filing the Criminal Revision Application. In the interest of justice the delay deserves to be condoned. The application is allowed in terms of prayer clause (d1). Criminal Revision Application deserves to be restored to its original status on depositing a cost of Rs.1500/- to be paid to the Maharashtra State Legal Services Authorities within two weeks from today.

10. Criminal Application No. 463 of 2019 is allowed and disposed of accordingly and Criminal Revision Application No. 493 of 2003 is restored to its original status.

11. The applicant-Rajesh Bhagwan Mishra has surrendered before the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai today. The report is taken on record and marked as 'Article-X' for the purpose of identification. The learned counsel for the applicant submits that the applicant no.1 was on bail during the pendency of the trial as well as during the pendency of the appeal. The applicant no.1 had not committed breach of any conditions imposed upon him. It is also submitted that this Court vide order dated 22nd January 2004 had also pleased to grant bail to the applicant.

12. It is submitted that for no fault of the applicant the Criminal Revision Application is dismissed for want of prosecution and therefore, conviction warrant was issued. Pursuant to the conviction warrant the applicant no. 1 has surrendered and deserved to be enlarged on bail. Hence, the following order:-

ORDER

- i) The substantive sentence imposed upon the applicant no.1 by the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai in C.C. No. 179/P/99 and thereafter confirmation by the Additional Sessions Judge, Mumbai is hereby suspended.
- ii) The applicant be enlarged on bail on furnishing

P.R. bond in the sum of Rs.25,000/-(Rupees Twenty Five Thousand only) and one or more solvent sureties in the like amount.

iii) The applicant be enlarged on provisional cash bail for a period of six weeks within which he shall furnish solvent sureties to the sanctification of the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai.

iv) The applicant shall cause his presence before the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai once in six months on the date assigned by the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai.

iv) Upon failure to attend any two consecutive dates, the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai shall make report to the High Court and the prosecution would be at liberty to seek cancellation of bail.

The parties to act on an authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J)