

RUPALI
RAJESH
WAKODIKAR
Digitally signed
by RUPALI
RAJESH
WAKODIKAR
Date:
2021.08.27
15:18:11 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3002 OF 2021

Vandana Chandrakant Deshmukh ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondents

ALONGWITH
CRIMINAL WRIT PETITION NO. 3004 OF 2021

Shri. Swami Vivekanand Adarsha Vikas
Shikshan Sanstha and Ors. ...Petitioners
Versus
The State of Maharashtra and Anr. ...Respondents

ALONGWITH
CRIMINAL WRIT PETITION NO. 3003 OF 2021

Chandrakant Ramchandra Deshmukh ...Petitioners
Versus
The State of Maharashtra and Anr. ...Respondents

ALONGWITH
CRIMINAL WRIT PETITION NO. 3005 OF 2021

Chandrakant Ramchandra Deshmukh ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Balasaheb R. Deshmukh for the Petitioner.

Mr. A.R.Patil, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 25th AUGUST, 2021

P.C. :

1. Heard learned Counsel for the petitioner and the learned APP for the State.
2. By this petition, the petitioner has impugned the order dated 3rd February, 2021 by which, the petitioner's application seeking adjournment was rejected.
3. Perused the papers. The petitioner is the original accused and the respondent No.2 herein is the original complainant. The respondent No. 2 filed a complaint as against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act in the Court of the learned Judicial Magistrate, First Class, Kolhapur. After trial, the petitioner was convicted for the said offence vide judgment and order dated 24th February, 2015. Being aggrieved by the said judgment and order of conviction, the petitioner filed an appeal in the Sessions Court, Kolhapur, being Criminal Appeal No. 81 of 2015. It appears that during the pendency of the said appeal before the Appellate Court, the petitioner filed an application under Sections 391, 311 read with 315 of the Criminal Procedure Code and prayed that the petitioner be permitted to lead

additional evidence to substantiate the defence, taken by the petitioner herein. The said application was contested by the respondent No.2 by filing his say on 12th March, 2020. The learned Sessions Judge, Kolhapur, after hearing the parties, allowed the application of the petitioner vide order dated 13th March, 2020 and directed the trial Court to record the evidence of the petitioner herein, within 30 days from the date of the receipt of this order. Learned Counsel for the petitioner submits on instructions, that no petition has been filed by the Respondent No.2, as per his knowledge, challenging the Sessions Court order dated 13th March, 2020.

4. Learned Counsel for the petitioner informs that the petitioner appeared before the trial Court on 21st March, 2020 and placed on record the order of the Sessions Court, Kolhapur dated 13th March, 2020, by filing an application. Learned Counsel for the petitioner further submits that the petitioner filed another application on the very same day i.e. on 21st March, 2021 and requested the Trial Court to allow the petitioner to deposit Rs.5,000/- as directed by the learned Sessions Judge. The said application was allowed, pursuant to which, Rs.5,000/- was deposited by the petitioner. It appears that thereafter, the matter was adjourned to 7th April, 2020. Thereafter, a National Lockdown was announced by the Central as well as the State Government, i.e. between the period from March, 2020 to

February, 2021. It appears that the petitioner again filed an application before the Trial Court and sought an adjournment as well as exemption from appearance of the petitioner on 3rd February, 2021. The said application was rejected by the Trial Court after observing that the learned Sessions Judge vide order dated 13th March, 2020 had directed to record evidence within a period of 30 days and that the said period was over and therefore, the Court had no jurisdiction to grant any adjournment/exemption. The said order dated 3rd February, 2021 has been impugned in this petition.

5. A perusal of the impugned order shows that the learned Magistrate has rejected the application for adjournment/exemption only on the premise that 30 days time granted by the Sessions Court to record the evidence of the petitioner was over and as such, the Court had no jurisdiction to grant any adjournment.

6. It is pertinent to note, that if any given case, an order passed by the Appellate Court cannot be complied with, it is incumbent for the learned Judge to apply for extension of time by setting out the reasons, why the evidence could not have recorded within the stipulated time. The learned Judge could not have rejected the said application without making

any request to the Appellate Court, for further extension of time.

7. Considering the aforesaid, the impugned order dated 3rd February, 2021 is quashed and set aside.

8. The learned Magistrate to apply to the Session Courts for extension of time to comply with the order dated 13th March, 2020. The same be done expeditiously.

9. The application is disposed of on the aforesaid terms.

10. It is made clear that the petition has not been heard on merits and as such, all contentions for all parties are kept open on the merits of the case.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.