

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

CRIMINAL WRIT PETITION NO.99 OF 2020

Ramesh S/o Laxman Borude,
Age-35 years, Occu:Agril.,
R/o-Nalegaon, Tq-Nagar,
District-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
- 2) Atul S/o Raosaheb Datrange,
Age-25 years, Occu:Agril.,
R/o-Near Satpute Talim, Nalegaon,
Ahmednagar, Tq. and District-
Ahmednagar,
- 3) Balasaheb S/o Sitaram Datrange,
Age-46 years, Occu:Business,
R/o-Gadgil Patangan, Borude Galli,
Nalegaon, Ahmednagar,
- 4) Raju S/o Sitaram Datrange,
Age-42 years, Occu:Business,
R/o-Tange Galli, Nalegaon,
Ahmednagar,
- 5) Dinesh S/o Raosaheb Datrange,
Age-28 years, Occu:Agril.,
R/o-Nalegaon, Ahmednagar.

...RESPONDENTS

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Mr.D.R. Jaybhar Advocate with Mr. Shubham D. Jaybhar
Advocate for Petitioner.
Mr.S.P. Deshmukh, A.P.P. for Respondent No.1 – State.
Mrs.Suvarna M. Zaware Advocate for Respondent Nos.2 to 5.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 15th JUNE, 2022

ORDER :

1. Present Writ Petition has been filed by the original informant challenging the order passed by learned Sessions Judge on 9th October 2019 on Exhibit-10 in Criminal Revision No.147 of 2019, thereby extending the period of depositing cost amount before the trial Court.

2. Heard learned Advocate appearing for the Petitioner, learned APP appearing for respondent No.1 State and learned Advocate appearing for respondent Nos. 2 to 5.

3. Learned Advocate for the petitioner submits that the respondents had filed Criminal Revision No.147 of 2019 before the learned Sessions Judge, Ahmednagar invoking the powers of the said Court under Section 397 of the Code of Criminal Procedure questioning the legality and propriety of the order dated 26th August 2019 passed below Exhibit-32 in R.C.C. No.246 of 2017. By the said order the learned Magistrate has rejected the application to recall three witnesses examined by

the prosecution for their cross-examination. The said Revision came to be allowed on 17th September 2019, and revision petitioners were directed to deposit an amount of Rs.15,000/- to be paid to the witnesses equally and then cross-examination of the prosecution witnesses was allowed. That amount was to be paid on 21st September 2019. However, it appears that the accused persons – present respondents failed to deposit the said amount and therefore, they moved an application at Exhibit-9 on 23rd September 2019 for the extension of the period of deposit of cost. That application came to be allowed and the time was extended till that date i.e. 23rd September 2019 and in addition to that amount of Rs.500/- was directed to be paid by the accused to the DLSA funds. It appears that again the respondents – original accused persons failed to comply with the said order and they filed application on 9th October 2019 at Exhibit-10 for further extension. Finally the time limit was extended till 14th October 2019 for depositing the amount of cost with the trial Court and additional cost of Rs.500/- to DLSA funds, by order dated 9th October 2019.

4. According to the learned Advocate for the petitioner the said order passed on 9th October 2019 by the learned Sessions

Judge is beyond the powers and the prohibition under Section 362 of the Code of Criminal Procedure. The said prohibition to alter the Judgment is absolute and that cannot be altered even by this Court under its inherent powers under Section 482 of the Code of Criminal Procedure. Reliance has been placed on the decision in ***Narayan Prasad vs. State of Bihar and others, AIR 2017 SC (Supp) 252***, wherein it has been held that:-

“The prohibition under Section 362 of Criminal P.C. to alter judgment is absolute; after judgment is signed even High Court in exercise of its inherent power under Section 482 of Criminal P.C. has no authority or jurisdiction to alter/review the same. Inherent power under Section 482 of Code was purported to avoid abuse of process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of facts by way of review is not permissible under Code and is expressly barred, it is not for Court to exercise its inherent power to reconsider the matter.”

5. Learned counsel for the petitioner has further placed reliance on the decision in ***Mohammed Zakir vs. Shabana and others, AIR Online 2018 SC 426***, wherein it has been held that, the whole purpose of Section 362 of the Code of Criminal

Procedure is only to correct a clerical or arithmetical error and re-hearing of the matter on merits is impermissible.

6. The learned Advocate appearing for respondent Nos. 2 to 5 supports the order and submits that by extending the time to deposit the amount of cost, it will not amount to alteration in the Judgment.

7. At the outset, it is to be noted that by order dated 26th August 2019 passed below Exhibit-32 in R.C.C. No.246 of 2017 the learned Magistrate has rejected the application filed by the accused persons to recall three prosecution witnesses for cross-examination. The revisional Court found that the said order is unsustainable and also in order to have fair trial, that order was set aside and cost was imposed on the accused persons. Directions were given that said cost amount should be deposited on 21st September 2019 before the learned Magistrate and thereafter the Magistrate was even directed to adhere to the programme regarding the cross-examination of which the dates were given by the revisional Court itself. A default clause was also provided that in case the revision petitioners do not pay the

cost amount or to follow the time limit, then the liberty was given to the Magistrate to forfeit the right of cross-examination.

8. It can be seen that by Exhibit-9, it was contended on behalf of the present respondents that since the amount was collected on that date i.e. 23rd September 2019, it could not be deposited and for that extension of period was sought. Unless that time would have been extended, the learned Magistrate would not have accepted that time. By taking a lenient view and taking into consideration right to cross-examine, that time was extended by three days, however additional amount of cost of Rs.500/- to be paid to DLSA was also imposed. Again by way of Exhibit-10 that outer limit was sought to be extended on some count, which was not even appealing for the learned Sessions Judge, Ahmednagar. However, in the interest of justice that extension was granted finally by making it time bound. Extension of period for depositing cost will not amount to alter the Judgment. Nothing was on merits there for extension of period to deposit the cost amount and therefore it cannot be said that there was any prohibition as contemplated under Section 362 of the Code of Criminal Procedure. The decisions relied by the petitioner will not be applicable to the facts of the present case.

In ***Narayan Prasad vs. State of Bihar and others*** (supra), it was the maintenance amount that was tried to be modified and therefore it was held that there is prohibition under Section 362 of the Code of Criminal Procedure after the Judgment is signed even by the High Court. Definitely the amount of maintenance is arrived at after churning of evidence and taking into consideration various criteria. That cannot be altered contending that it is a clerical or arithmetical error. So far as the decision in ***Mohammed Zakir vs. Shabana and others*** (supra) is concerned, the facts are not been given in detail and therefore, though the proposition of law cannot be disputed, it can be certainly said that for the facts of the present case that ratio is not applicable.

9. The case status of R.C.C. No.246 of 2017 that has been submitted today on behalf of the petitioner, shows that there is no much progress in the matter though the matter is of 2017. It appears that now the amount of cost is deposited in view of Exhibit-37 and therefore it would be suffice to expedite the proceedings and make it time bound. For the above said reasons, following order is passed:-

ORDER

(I) The Criminal Writ Petition stands dismissed.

(II) However, learned 17th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, before whom R.C.C. No.246 of 2017 is pending, is directed to expedite the trial and dispose it of by 30th November 2022, as per the law.

[SMT. VIBHA KANKANWADI , J.]

asb/JUNE22