

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL APPLICATION NO.3328 OF 2022

DEEPAK KESHAVRAO BODKHE
VERSUS
THE STATE OF MAHARASHTRA

Mr. Umesh Patil Bodkhe, Advocate for the applicant
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 17th November, 2022

P. C.

1. Heard the learned counsel for the parties.
2. Inadvertently and ostensibly innocuous pursis came to be filed in an appeal seeking withdrawal of the criminal appeal under the belief that the learned trial Judge has awarded sentence of fine only while recording conviction, when in fact, the order passed by the trial court reads as under:-

1. Accused Deepak Keshavrao Bodkhe is hereby convicted vide Section 255 (2) of Cr. P. C. and sentenced to pay fine of Rs.5,000/- (Rupees Five Thousand Only) for the offence punishable u/s. 353 of IPC. In default of payment of fine amount, accused shall undergo further fifteen days sentence

of simple imprisonment.

*2] Accused is also hereby convicted and sentenced to suffer simple **imprisonment for two months** and pay fine of Rs.1,000/- (Rs. One Thousand Only) for the offence punishable under Section 332 of IPC. In default of payment of fine amount accused shall undergo further five days sentence of simple imprisonment.*

3] Accused is hereby acquitted vide section 255(1) of Cr. P. C. of the offences punishable u/s. 323, 504, 506 of IPC and section 132 of Representation of People Act, 1951.

4] Bail bonds of accused shall stand surrendered.

5] Copy of this judgment be given free of cost to accused.

6] Dictated and pronounced in open court.

3. In clause-2 the learned trial court had imposed sentence and directed the appellant to suffer simple imprisonment for two months and to pay fine of Rs.1,000/- for the offence punishable under Section 332 of the Indian Penal Code. In clause-1 punishment was only to pay fine of Rs. 5,000/-. It appears from the pursis filed by the advocate that applicant only states that the appellant does not want to prosecute the appeal. In view of the pursis the order has been

passed on 02-07-2022 by the learned Additional Sessions Judge, Aurangabad under impression that sentence is only in nature of fine.

4. Thus, there is inadvertent mistake on the part of all the concerned. What is material is that now if order is allowed to stand it will have adverse effect on the liberty of the applicant and he will have to undergo further imprisonment. Only thing for consideration is as to whether under powers of 482 appeal can be restored.

5. Learned advocate for the applicant relies upon the judgment in the case of K. G. Keralakumaran Nair Vs State of Kerala and another reported in 1995 Cri.L.J. While considering Section 482 of Cr. P. C. the Kerala High Court has observed that in three circumstances the inherent jurisdiction can be exercised (1) to give effect to an order under the Code. (2) to prevent to abuses of the process of court and (3) to otherwise secure the ends of justice. In absence of specific provision of restoration

this court finds it fit to restore the appeal to otherwise secure the ends of justice. He further relies upon judgment in the case of State of Haryana Vs Janak Singh and others reported in (2013) 9 SCC 431. In the said judgment, it is observed that before the High Court the appeal was withdrawn by the advocate of one of the parties to the appeal and the High Court had passed the order in the nature of appeal reducing the sentence to sentence already gone. It is observed that the High Court could have acquitted the respondent on hearing the appeal. Thus, what appears is that right to appeal is valuable right vested in the accused. Such right cannot be waived in a light manner. In this case, it is found that the pursis was filed in a casual manner. The learned court below also acted bonafide and with belief that the advocate and the applicant have filed pursis by examining all the angles and passed the order. It was necessary for the court also to verify whether really the sentence is only of a fine and then should have proceeded to pass an order.

6. Considering the above aspect and that the question

of liberty of the applicant is involved, this court finds it fit to restore the criminal appeal No. 145/2017 to its original file.

7. On restoration of the appeal, it would be appropriate for the applicant to immediately approach the learned Additional Sessions Judge and to pray for necessary orders seeking suspension of sentence. Hence, the following order:-

ORDER

a] The criminal application No. 3328/2012 is allowed.

b] The impugned order dated 02-07-2022 passed by the learned Additional Sessions Judge is quashed and set aside.

c] Criminal Appeal No. 145/2017 is restored to its original file.

d] The applicant to approach the learned Additional Sessions Judge, Aurangabad and to seek necessary orders in respect of suspension of sentence.

e] The application stands disposed off.

[KISHORE C. SANT, J.]