

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

CRIMINAL REVISION APPLICATION NO.176 OF 2021

**RAHUL BHIRSING SAHARE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Saurish Shetye i/b. Mr. Prem Kumar Pandey
APP for Respondent – State : Smt. G. L. Deshpande
. . .

CORAM : BHARAT P. DESHPANDE, J.

DATED : 11th AUGUST 2022

PER COURT :

By this Revision Application, applicant is challenging the impugned order passed by the learned Additional Sessions Judge, Parbhani in Criminal Revision No. 61 of 2019, dated 8th November 2021.

2. The learned Additional Sessions Judge, Parbhani vide impugned order allowed the said Revision, quashed and set aside the order of the learned Magistrate passed below Exhibit-152, dated 16th January 2019 in RCC No.35 of 2017, pending before the Judicial Magistrate First Class, Manwat and allowed the said application.

3. Heard Mr. Saurish Shetye holding for Mr. Prem Kumar Pandey, learned counsel for applicant and Smt. G. L. Deshpande, learned APP for State.

4. Learned counsel for applicant forcefully submitted that applicant who is an accused before the learned Magistrate raised preliminary objection to the maintainability of Criminal Revision No. 61 of 2019 claiming therein that impugned order is interlocutory order and therefore Revision is not maintainable. He invited attention to para No.7 of the impugned order, wherein such objection has been raised. However, the learned Additional Sessions Judge did not deliberate on such aspect of maintainability of Revision and proceeded to decide it on merits.

5. Learned APP though tried to submit that there is observation in para no.16 and fairly submitted that such observations are only with regard to decision of *Madhu Limaye's* case and not on merit of the maintainability of the Revision Petition before the learned Additional Sessions Court.

6. After perusal of Revision Petition, the impugned order and the point raised by the learned counsel for applicant, present Revision could be disposed of on limited grounds that the learned Additional Sessions Court to decide the objections raised by applicant regarding maintainability of the Revision Petition filed by respondent herein against the impugned order.

7. Points framed by the learned Additional Sessions Judge are found at para no.4. There is no point framed with regard to the maintainability of the Revision Petition, though specific objection was raised and recorded in para no.7.

8. The learned Additional Sessions Judge though discussed the ratio laid down in the case of ***Madhu Limaye***, failed to observe as to whether Revision filed before it is maintainable and impugned order is interlocutory order or otherwise. Therefore, on this limited aspect, impugned order needs to be quashed and set aside. The matter needs to be remanded to the learned Additional Sessions Judge, Parbhani with a direction to decide about maintainability of the Revision before it and thereafter to decide the same on merits.

9. Learned counsel for applicant placed reliance the case of ***Sheikh Inayatullah Rizwi Vs. Sayad Rahimatullah and others***, reported in ***1981 Mh. L.J. 249***, wherein the Hon'ble Division Bench of this Court at Nagpur observed that Revision Petition filed by the aggrieved party is maintainable, even though other party has filed first Revision Petition before the learned Sessions Court.

10. Considering the above aspects and the limited grounds which is canvassed today, I am convinced that the impugned order needs to be quashed and set aside and the matter needs to be remanded for deciding it afresh including the grounds regarding maintainability of the Revision Petition. The learned Additional Sessions Court shall give opportunity to both sides and then decide the Revision afresh within a period of three months from today. Hence the order :-

ORDER

- (I) The Revision Application partly allowed.
- (II) The impugned order dated 8th November 2021 in Criminal Revision No. 61 of 2019 passed by the learned Additional Sessions Judge, Parbhani is hereby quashed and set aside.
- (III) The said Revision Petition is restored to the file of learned Additional Sessions Judge, Parbhani.
- (IV) The learned Sessions Judge, Parbhani, directed to decide an objection regarding maintainability of the Revision Petition as raised by the present applicant and only thereafter to decide the Revision on merits, if found maintainable.
- (V) The said Revision shall be decided within a period of three months from the date of appearance of parties before it.
- (VI) Parties shall appear before the Additional Sessions Judge, Parbhani on 6th September 2022.
- (VII) Liberty granted to the applicant to move before the learned Additional Sessions Judge at Parbhani for stay of the trial court proceedings till the decisions of Revision Application.
- (VIII) In view of above observations, Revision Application stands disposed of.

(BHARAT P. DESHPANDE, J.)