

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 5299 OF 2017

Santosh Bhikachand Samdadiya ...Petitioner
Versus
Sukhraj Pushkaraj Kochar And Ors. ...Respondents

....

Mr. Kuldeep U. Nikam, Advocate for the Petitioner.

Mr. S.D. Shinde a/w Ms. Kavita Totkekar, Advocate for the Respondent
Nos.1 and 2.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 26th SEPTEMBER, 2022.

PER COURT:

1. The petitioner has challenged the order dated 6th November, 2017 passed by learned Additional Sessions Judge, Niphad, below Exhibit-5 in Criminal Appeal No.73 of 2017 rejecting the said application seeking stay on the effect, implementation and execution of Judgment and order dated 13th September, 2017 passed by learned J.M.F.C., Chandwad to the extent of clause 9 and 10 of the said Judgment.

2. Vide Judgment and order dated 13th September, 2017, the learned J.M.F.C., Chandwad convicted accused No.1 for an offence under Section 323 of Indian Penal Code (for short 'IPC') and released him on probation under Section 4(3) of Probation of Offenders Act. The accused No.1 was acquitted for offences under Section 504 and 506(2) of IPC. The accused Nos. 2 and 3 were

acquitted for offences under Sections 325, 504 and 506 (2) r/w 34 of IPC. The trial Court directed the complainant to pay compensation of Rs.5,000/- each. It was also held that the complainant has prima facie committed offences under Sections 193, 199 and 182 IPC and it is necessary to conduct inquiry under Section 344 Cr.P.C. It was also held that inquiry is necessary about witness no.5 Dnyaneshwar Gunjal giving false evidence in Court .

3. The petitioner preferred Criminal Appeal No. 73 of 2017 before Sessions Court at Niphad challenging order passed by J.M.F.C., Chandwad in R.C.C. No.97 of 2013 initiating inquiry against complainant. The petitioner also prayed that original accused be convicted for offences punishable under Sections 323, 504 and 506 of IPC. During the pendency of the appeal the petitioner preferred an application below Exhibit-5 for granting stay to the adverse orders passed against the petitioner. During the hearing of application it was submitted that impugned order is illegal and its effect may be stayed. The order dated 6th November, 2017 mentions that, while hearing the application, it was pointed to him that, he has made such appeal under Section 372 of Cr.P.C. as against order of acquittal of lower Court as regards acquittal of accused Nos. 2 and 3 and simultaneously as against releasing

accused No.1 on probation of a bond for good behavior and conduct and that, at the same time he has challenged order of learned Magistrate as against complainant, for paying such compensation of Rs.5000/- to each accused Nos. 2 and 3 and that as against such proceedings to be taken up against complainant under Section 344 of Cr.P.C., for he committing the offence punishable under Section 193, 199 and 182 of IPC and it is impermissible. It was contended by petitioners Advocate that, there cannot be two separate proceedings in respect of same impugned order dated 13th September, 2017 and he could challenge impugned order by way of appeal only and there cannot be two separate proceedings, one challenging the order of acquittal and the other challenging order of payment of compensation and such action to be taken under Section 344 of Cr.P.C. The learned Sessions Judge held that only a revision could be made against order of payment of compensation and such action to be taken under Section 344 of Cr.P.C. There cannot be clubbing of two parts of impugned order in appeal, for which that part of order could be challenged by way of revision under Section 397 of Cr.P.C. The powers of Additional Sessions Judge in hearing any appeal and hearing any revision are different in sphere and no aggrieved part can adopt such recourse of filing an appeal, for challenging order

as to such payment of compensation and action to be taken under Section 344 of Cr.P.C. by way of appeal. Since, the appellant has not filed separate proceeding by way of revision, for challenging such order of payment of compensation and action to be taken under Section 344 of Cr.P.C., there does not require staying effect and operation of such impugned order dated 13th September, 2017 for order of payment of compensation and action to be taken under Section 344 of Cr.P.C. As regards other part of impugned order dated 13th September, 2017, accused Nos. 2 and 3 are acquitted and accused No.1 has been ordered to be released on probation, there does not require any order of staying effect and operation. Application was rejected.

4. The said order is challenged before this Court by preferring this petition. Vide order dated 6th February, 2018, this Court had granted interim relief and till the next date the effect and operation of clauses 9 and 10 of the impugned order dated 13th September, 2017 passed by learned J.M.F.C., Chandwad, Nashik was stayed.

5. Learned counsel for the petitioner submits that since the impugned order is common, the petitioner was entitled to prefer one appeal. Any inquiry conducted under Section 344 of Cr.P.C. Since, the proceedings were pending before the same Court, it was

not necessary to initiate separate proceedings.

6. Learned Advocate for the Respondent submitted that although the impugned orders arises out of the same Judgment, the proceedings are distinct in nature and it was necessary for the petitioner to prefer separate proceedings.

7. The petitioner was seeking enhancement of sentence, acquittal and also challenging the inquiry initiated under Section 344 of Cr.P.C. and order directing payment of compensation. The petitioner is required to file separate proceedings. Since the petitioner had preferred one appeal memo, it can be treated as an appeal challenging for enhancement of the sentence, order of acquittal of accused Nos.2 and 3. The petitioner is permitted to carryout requisite amendment, if any, required in the said appeal. The petitioner is permitted to file separate revision application challenging the inquiry initiated under Section 344 of Cr.P.C. and direction to pay compensation to complainant. The delay, if any, in preferring the revision application may be condoned. The revision application may be preferred within seven weeks.

8. The interim relief granted by this Court vide order dated 6th February, 2018 granting stay to clause 9 and 10 of order dated

13th September, 2017 shall continue for a period of seven weeks.

9. The petitioner will be at liberty to seek stay of directions in clause 9 and 10 of order dated 13th September, 2017 in revision application to be filed by petitioner. Such prayer shall be considered by the Court on merits.

10. Petition is disposed off.

(PRAKASH D. NAIK, J.)