

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

CRIMINAL WRIT PETITION NO. 129 OF 2023

Veena Swapnil Pangarkar

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Smt. Nandini Chittal, Advocate for the Petitioner.

Mr. P. M. Kulkarni, APP for Respondent No. 1.

Mr. P. N. Sonpethkar, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 16th MARCH, 2023.

P C. :-

. This petition is filed by the wife who is informant on the basis of whose information the prosecution is lodged and Special Case No. 18 of 2021 was being prosecuted in the Court of learned Additional Sessions Judge, Udgir. In the said proceeding, the Court at Udgir had passed an order issuing non bailable warrant by its order dated 07.10.2022. In the meantime, the husband who is respondent No. 2 in this petition that is accused No. 5 before the Court at Udgir filed Criminal Application No. 359 of 2022 in this Court at Principal Seat at Bombay seeking transfer of the proceeding or Special Case No. 18 of 2021 to the Court at Pune. In the said application, a stay came to be granted to the proceeding by order dated 06.12.2022.

Other accused moved learned Additional Sessions Judge at Udgir by filing pursis intimating the fact of grant of stay by this Court at Principal Seat at Bomaby and requested for recalling of the order dated 07.10.2022. The Trial Judge, in view of stay granted to the proceeding by this Court at Principal Seat at Bombay, recalled the order of issuing warrant by its order dated 22.12.2022. It is this order which is under challenge in this petition. When the petition was pending before this Court, this Court at Principal Seat at Bombay by order dated 22.02.2023 has transferred the proceeding pending before the Udgir Court to the Court at Pune.

2. Learned advocate for the petitioner vehemently argued that the order of issuance of warrant was already passed on 07.10.2022. There was no question of recalling the said order for want of power to review the order. By relying upon the judgment of the Hon'ble Apex Court in a case of **Adalat Prasad Vs. Rooplal Jindal and ors.** reported in **(2004) 7 SCC 338** she further submits that, when the proceeding was stayed, the learned Court had no power even to recall the order which was already passed on being satisfied that the case was made out under Section 299 of the Code of Criminal Procedure. She further submits that, even now though the proceeding is transferred, still if the impugned order is set aside, the order of issuance of warrant would revive.

3. Learned advocate for respondent No. 2 opposes the petition stating that, the learned Court at Udgir had rightly recalled/cancelled the order issuing warrant. He submits that, in fact, this was not an order passed by way of review. The only wording is used as 'recall' will not necessarily give it a colour of an order passed in the nature of review.

4. After hearing the parties, this Court finds that, without going into the merits of the matter it would be suffice to clarify that, since on 06.12.2022 the matter was stayed by the order of this Court at Principal Seat at Bombay in Criminal Application No. 359 of 2022, everything done by the Court thereafter would be nullity in the eyes of law including the present order dated 22.12.2022. It is further clarified that, the Court where now the proceeding is transferred shall proceed further taking the position in the matter as it stood on 06.12.2022.

5. By this, the petition stands disposed off.

(KISHORE C. SANT, J.)

PS.B.