

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 CRIMINAL APPEAL NO. 801 OF 2022

VICKY S/O RUSTUM KALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Nilesh S. Ghanekar
APP for Respondent No.1-State : Mr. R. V. Dasalkar
Advocate for Respondent No.2 : Ms. Uma Bhosale (appointed)

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 18 JANUARY 2023

PER COURT :-

1. In view of the order passed by this Court on 11.01.2023, the Investigating Officer is present with the case diary.
2. We have heard learned APP as well as the Investigating Officer on the point as to why the charge sheet was filed against the present appellant under Section 299 of the Code of Criminal Procedure (Cr.P.C.) by showing him as absconding. It is then informed that though the FIR came to be lodged on 02.03.2022, there were repeated attempts to arrest the appellant. Thereafter, on 16.04.2022, a proposal was sent for invoking the provisions of the Maharashtra Control of Organised Crime Act, 1999, however, that proposal came

to be rejected on 02.07.2022. In the mean time, and specifically on 17.05.2022, a team was sent for arrest of the appellant and the team reported that inquiry was made with the mother and other persons relating to the appellant, but the whereabouts of the appellant could not be traced and in view of the fact that the period of 90 days was to end, when some other persons were arrested in the matter, the charge sheet was filed on 04.07.2022 before the concerned court.

3. Time and again this Court has expressed that Section 299 of Cr.P.C. is an enabling provision which enables the court to record evidence even against an accused who has been declared absconding. For declaring an accused absconding, the procedure contemplated under Section 82 of Cr.P.C onwards is mandatory. Police cannot as of right file charge sheet by resorting to Section 299 of Cr.P.C. In any way, and under the said circumstance, the statement in the charge sheet that the accused appellant was absconding could not have been then accepted by this Court.

4. However, after considering the other aspects involved in the matter, when disinclination is shown to grant any relief to the appellant, learned Advocate for the appellant seeks withdrawal of the appeal. Hence, the appeal stands disposed off as withdrawn.

5. Fees of the appointed Advocate is quantified at Rs.5,000/- (Rupees five thousand only) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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