

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

CRIMINAL WRIT PETITION NO. 785 OF 2017

Sudhir Shamrao Taware

..Petitioner

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Sanjiv G. Punalekar a/w. Sachin Kanse for Petitioner.

Mr. A. R. Patil, APP for State/Respondent No.1.

Mr. R. M. Momin, for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 10 OCTOBER 2023

PC :

1. Heard Shri. Sanjiv Punalekar, learned counsel for the Petitioner, Shri. A. R. Patil, learned APP for the State/Respondent No.1 and Mr. R. M. Momin, learned counsel for the Respondent No.2.

2. The Petitioner has challenged the order dated 23.12.2016 passed by the Sessions Judge, Sangli, below Exhibit-5 in Criminal Revision Application No.169 of 2016. By the impugned order, the R.C.C.No.97 of 2008 pending before the J.M.F.C. Miraj was stayed till the decision of the Criminal Revision Application No.169 of 2016 before the Sessions Judge, Sangli. The Petitioner is

the original accused No.3 in the said trial before the J.M.F.C. Miraj. The trial proceeded substantially and on 25.11.2016 an application was made on behalf of the prosecution by the learned Special A.P.P. for issuing summons to the Investigating Officer P. A. Mutnale, P.S.I. Gade and P.S.I. Kurne. Learned Magistrate passed an order on 25.11.2016 observing that the last witness in that case was examined on 30.05.2016. Since then no effective steps were taken in spite of sufficient time and hence, the application was rejected.

3. The present Respondent No.2 who was the original first informant filed a Criminal revision application before the court of Sessions at Sangli challenging that order passed by the learned Magistrate rejecting the application for issuance of summons to those witnesses. While that revision application was pending, an application vide Exhibit-5 was made for staying of the trial during pendency of the said revision application. The order passed by the learned Sessions Judge in that stay application is challenged in this Court.

4. Learned counsel for the Petitioner submitted that, in the impugned order, the learned Sessions Judge has observed that the

revision was maintainable. He submitted that the order passed by the learned Magistrate was purely interlocutory and, therefore, the revision application was not maintainable. The observation is erroneous. The learned Sessions Judge should not have entertained the revision application itself. He submitted that, therefore, the petitioner has prayed for setting aside the impugned order dated 23.12.2016. The other prayer is for quashing the entire proceedings and the revision application No.169 of 2016 pending on the file of Sessions Judge.

5. Since the criminal revision application is pending, it would be appropriate if the Sessions Judge, Sangli decides that revision application. The Petitioner has raised a point of maintainability of the revision application. That point also needs to be considered and decided when the revision application is to be decided on merits.

6. As far as the observation made by learned Sessions Judge in the impugned order is concerned, he has observed that, the revision was maintainable. However, there was no discussion of legal issues and there was no observation as to how the trial

Court's order was not interlocutory. The impugned order is passed in the stay application in the revision application. The revision application is still pending. The petitioner herein can raise the issue of maintainability when the revision application is finally heard by the learned Sessions Judge, Sangli. Therefore, at this stage, I am not inclined to interfere with the impugned order as it is passed at an interim stage. The revision application is yet to be decided by the learned Sessions Judge, Sangli. Once some order is passed in the revision application, either of the parties will get cause of action to approach this Court. At this stage, I am not inclined to interfere with the impugned order or pending proceedings before the Sessions Court.

7. It is needless to add that the point of jurisdiction can always be raised by the petitioner before the Sessions Court. The learned Sessions Judge will have to consider his submissions on that issue and give a finding on that particular issue. Both learned counsel appearing before me today are agreeable to this view. The only concern which is expressed by the learned counsel for the petitioner is that, in case the revision application is decided and if

the trial proceeds further, either way, it may cause prejudice to him. Therefore, to certain extent the petitioner can be protected. Learned counsel for the Respondent No.2 has no objection for such course of action. Therefore, taking into account these submissions and concession given by learned counsel for the Respondent No.2, following order is passed:

O R D E R

- i) The learned Sessions Judge, Sangli is requested to decide the Criminal Revision Application No.169 of 2016 within a period of four weeks from today in accordance with law.
- ii) The Petitioner can raise issue of maintainability which will be decided by the learned Sessions Judge, Sangli, without being influenced by the earlier observation made in the order dated 23.12.2016 passed below Exhibit-5 in Criminal Revision Application No.169 of 2016 before the Sessions Judge, Sangli.
- iii) The stay granted on R.C.C.No.97 of 2008 pending before the J.M.F.C. Miraj shall continue for a further period of six weeks after the Criminal Revision Application No.169 of 2016 is

decided by the Sessions Court at Sangli.

iv) With this observation, the petition is disposed of.

(SARANG V. KOTWAL, J.)