

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

CRIMINAL WRIT PETITION NO. 486 OF 2023

Noor Mohammad Shaikh ..Petitioner
Versus
State of Maharashtra & Ors. ..Respondents

Ms. Rupali Gond for Petitioner.
Mr. Arfan Sait, APP for State/Respondent No.1.

**CORAM : SARANG V. KOTWAL, J.
DATE : 1 DECEMBER 2023**

PC :

1. On 17.08.2023, fresh notice was issued to the Respondent Nos.2 and 3 for final disposal of this petition at the admission stage. The notices were made returnable on 20.10.2023. The office remark shows that the notices are duly served on both the respondents. Today nobody appears for them. They have not made any arrangement for their representation in this petition. Therefore, I proceed to hear the learned counsel for the petitioner, as well as, the learned APP to decide this petition.

2. Rule. Rule is made returnable forthwith as in the order dated 17.08.2023 it was clarified that the petition would be

decided finally at the admission stage.

3. The petitioner is the first informant in C.R.No.76 of 2010 registered at Kondhwa police station, under sections 447, 341, 506(I) r/w. 34 of the I.P.C. The investigation was carried out and the charge-sheet was filed against these Respondent Nos.2 and 3. The allegations are that, both these respondents had parked their tempo and had put up a tin shed, iron columns and bamboo structure; thereby obstructing the regular path used by the residents of the petitioner's society.

4. The matter proceeded by way of S.C.C.No.1583 of 2010 before the 2nd Jt. J.M.F.C., Cantonment Court, Pune. On 10.08.2022, the learned Magistrate passed the impugned order of stopping of the proceedings U/s.258 of the Cr.p.c. and discharged the accused from the aforesaid offences. It was observed that, the offence was committed on 11.04.2010. The charge-sheet was filed on 04.06.2010. The accused remained absent since filing of the charge-sheet. The prosecution failed to secure their presence. Keeping the matter pending for the presence of the accused would

be a futile exercise and, therefore, exercising the power U/s.258 of the Cr.p.c., the proceedings were stopped.

5. Learned counsel for the petitioner invited my attention to the *roznama* of the case which shows that the case was pending before the *Lok Nyayalaya* for almost 7 years. This has caused the delay. She submitted that the accused cannot take advantage of not remaining present before the court. The learned Magistrate had all the powers to secure their presence by issuing bailable warrant, non bailable warrant or even proclamation. However, without taking these steps the accused were discharged. Thus, the accused are benefited from their own wrong.

6. Learned APP also supported the contentions raised by the petitioner.

7. In my opinion, the grievance of the petitioner is justified. The matter was not pending because of some inaction on the part of the petitioner. It was pending for quite some time before the *Lok Nyayalaya*. The accused did not appear before the Court after it was placed before the Magistrate. They cannot take advantage of

their own wrong to their own benefit. Hence, the impugned order is required to be set aside.

8. Hence, the following order:

O R D E R

- i) Rule is made absolute in terms of prayer clause (b).
- ii) The trial is expedited. The learned 2nd Jt. J.M.F.C., Cantonment Court, Pune shall take steps in accordance with law to secure the presence of the accused/Respondent Nos.2 and 3 herein.
- iii) The petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)