

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

CRIMINAL REVISION APPLICATION NO. 215 OF 2023

The State of Maharashtra	..Applicant.
Versus	
Vaidyanath Siddheshwar Mukhiya & Anr.	..Respondents

Mr. A. R. Patil, APP for State/Applicant.

Ms. Anima Mishra a/w. S.T.Pandey a/w. Arvind Singh a/w. Ritu Singh a/w. Kajal Upadhyay a/w. Anuj Singh for Respondents.

CORAM : SARANG V. KOTWAL, J.

DATE : 27 SEPTEMBER 2023

PC :

1. The State has filed the present criminal revision application for restoration of Criminal Appeal No.195 of 2019 on the file of the learned Additional Sessions Judge, Thane.

2. The Respondent Nos.1 and 2 were the original accused Nos.1 and 2 in R.C.C.No.2652 of 2018 before the 3rd J.M.F.C., 2nd Court, Thane. At the end of the trial, both these respondents were acquitted vide Judgment and order dated 02.08.2019. The case arose out of an F.I.R. lodged at Vartaknagar police station vide C.R.No. I 187 of 2018, under sections 452, 354, 323, 504, 506(2), 427 r/w. 34 of the I.P.C.

3. The State of Maharashtra challenged the Judgment and order of acquittal by filing Criminal Appeal No.195 of 2019 before the Court of Sessions at Thane.

4. From the record, it appears that the said Appeal was dismissed by the Additional Sessions Judge, Thane, vide his order dated 26.04.2022. It was observed that the Appellant's advocate were absent, paper book charges were not paid during the previous two years and, therefore the proceedings stood dismissed for want of prosecution.

5. The Applicant/State of Maharashtra filed Criminal M.A. (St) No.7193 of 2022 for setting aside that order. That application was rejected by the Additional Sessions Judge, Thane vide his order dated 13.12.2022 on the ground that, such application for restoration was not maintainable.

6. Both these orders are challenged in the present revision application.

7. Heard Shri. A. R. Patil, learned APP for the State/Applicant and Ms. Anima Mishra, learned counsel for the

Respondents.

8. Learned APP pointed out that the second impugned order dated 13.12.2022 itself shows that the paper-book charges were deposited on 10.12.2021 i.e. much prior to the first impugned order dated 26.04.2022. Learned APP relied on a copy of that receipt dated 10.12.2021 which is annexed at Exhibit-D to this revision application. Therefore, on the first ground of non payment of paper-book charges, it is clear that the observations of the learned Additional Sessions Judge were not factually correct. It is possible that, this fact was not brought to his notice. The second ground for dismissal was absence of learned APP. There was no adjudication on merits of the matter.

9. Learned counsel appearing for the Respondent Nos.1 and 2 submitted that, they are acquitted by a competent court. They are suffering for no fault of their own. She submitted that, they are facing difficulty in securing jobs because the police are not giving them clearance certificate.

10. I have considered these submissions. As is discussed

above, the order of dismissal was passed on factually incorrect reasoning and secondly the merits of the matter were not considered, though, the proceedings were in the nature of criminal appeal. On these both counts, the impugned order of dismissing the Appeal is required to be set aside. At the same time, grievance of the Respondent Nos.1 and 2 will also have to be taken into consideration.

11. Hence, the following order:

O R D E R

- i) The Criminal Appeal No.195 of 2019 is restored to the file of Additional Sessions Judge, Thane.
- ii) The Appeal shall be decided expeditiously and, as far as possible, within a period of three months from today.
- iii) The Criminal Revision Application is disposed of.

(SARANG V. KOTWAL, J.)