

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.4909 OF 2021**

Vivek Prakash Solanki and Ors.

.. Petitioners

V/s.

State of Maharashtra and Anr.

.. Respondents

Mr. Amit Munde for Petitioners.

Mrs. G.M.Mulekar, APP for Respondent No.1-State.

Ms. Shaila S. Zende, Appointed Advocate for Respondent No.2.

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.****DATE : 21 JULY 2023.****PC. :**

1. In pursuance of Order dated 30.06.2023, Mr. Dharnedra S. Kamble, Assistant Commissioner of Police of Borivali Police Station, has filed an Affidavit dated 05.07.2023. It is stated therein that, investigation of the present crime was completed on 23.03.2022. That, Mr. Amol Kanse, Police Hawaldar (No.041031) was deputed as a Court Clerk for the Court of Metropolitan Magistrate, 26th Court, Borivali, Mumbai. That, the Court Clerk attached to the concerned Court viz. Mr. Patil refused to accept the Chargesheet as the accused were not present in Court. It is further stated that, on 30.06.2023, the Assistant Commissioner of Police, Borivali Division along with Mr. Namdeo Jadhav personally went to the concerned Court at Borivali to submit the chargesheet, however

Clerk Mr. Patil has refused to accept the chargesheet, as the accused were not present in Court. A Station Diary, entry to that effect has been effected at Serial No. 42 dated 30.06.2023 at about 5:11 p.m. (page No. 59 to the Writ Petition).

2. *Prima facie* it appears to us that, the concerned Clerk of the Court, viz. Mr. Patil caused further delay in submitting the chargesheet in the present crime which was subsequently filed on 01.07.2023.

3. In view thereof, we direct the Registrar Judicial-II, to call for the explanation from Mr. Patil, Court Clerk attached to Metropolitan Magistrate, 26th Court, Borivali, Mumbai for the aforementioned as to why the chargesheet was not accepted since 24.03.2022 till 01.07.2023 and also to state the provisions, either in the Cr.PC. or otherwise, for presence of accused persons while accepting chargesheet by the Registry of the said Court. The said explanation be called for on or before 05.08.2023.

Registrar- Judicial-II is also directed to forward a copy of this Order to the Metropolitan Magistrate Court, Mumbai by hand delivery.

4. Learned Advocate for the Petitioners seeks leave to withdraw Petition with liberty to adopt alternate remedy as contemplated under the provisions of Cr.PC. before the trial Court.

Leave and liberty granted.

5. Disposed off as withdrawn with the aforesaid liberty.
6. List the matter on 7th August 2023 under the caption 'for reporting for compliance' of the present Order.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
Date:
2023.07.31
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