

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 612 OF 2024

Abdul Raheman Mohd Ismail Malang

VERSUS

The State Of Maharashtra Through Police Inspector

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Advocate for the Petitioner : Mr. Pankaj A. Bharat

APP for Respondent/State : Mr. D.J. Patil

Advocate for Respondent No.2 : Mrs. A.N. Ansari

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CORAM : S.G. MEHARE, J.

DATED : JULY 18, 2024

PER COURT:-

1. Heard the respective counsels.
2. A short question has been raised whether an opportunity should be granted to the petitioner to examine the witnesses in support of his case. A private complaint was filed. The issue process order was passed against the accused. The accused has challenged that process order before the Sessions Court. The Sessions Court long back rejected the revision. Thereafter, the charges were framed. The petitioner/complainant lead the evidence. Thereafter, he failed to produce the witnesses. Hence on 10.02.2020, the learned Judicial Magistrate First Class by its order closed the evidence of the complainant. He took an exception to that order before the learned Sessions Judge. The learned Additional Sessions Judge confirmed the order of the Magistrate by the impugned order dated 07.03.2024.

3. Learned counsel for the petitioner submits that the petitioner is old aged and due to Covid-19 pandemic, he could not pay attention to the case. He has a good case on merit. A few witnesses are to be examined. So to make the justice, an opportunity may be granted.

4. Learned counsel for the contesting respondent submits that there was a deliberate protraction of the trial. He did not pay attention to the Courts order and put the trial on hold for no reason. Both impugned orders are legally correct, proper and well reasoned. The conduct of the petitioner could be examined from the negligence in proceeding with the trial. She would further argue that speedy trial is the right of the accused. Therefore, both Courts have correctly closed the case of the complainant.

5. As mentioned above, the issue process order was impugned before the Sessions Court. The Sessions Court declined to interfere with the order of issue process. Then the complainant was examined and the matter was remained pending. It appears that there was no deliberate delay on the part of the petitioner not calling or producing evidence to support his allegations. Normally, the Court should not deny the opportunities of fair trial. However, the delay has been caused. The accused/respondent is attending the trial for many dates. For the negligence of the petitioner, the compensation may be paid to the accused. In normal course, the trial should be decided on

merit. Hence, the Court is of the view that a lenient view may be taken by imposing cost upon the petitioner. Hence, the following order :

ORDER

- (i) The petition is allowed.
- (ii) The impugned orders of the learned Judicial Magistrate First Class, Udgir passed below Exhibit-1 in S.T.C. No.596/2012 dated 10.02.2020 and learned Additional Sessions Judge, Udgir passed in Criminal Revision Application No.7/2023 dated 07.03.2024, stand quashed and set aside.
- (iii) An opportunity is granted to the petitioner to furnish the list of witnesses and file an application for issuing summons to them on 01.08.2024 and shall try to conclude the trial within four months thereafter.
- (iv) The petitioner shall pay cost of Rs.5000/- to respondent no.1/accused on or before 01.08.2024.
- (v) Both parties shall appear before the learned Judicial Magistrate First Class on 01.08.2024.

(S.G. MEHARE, J.)