



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 CRIMINAL WRIT PETITION NO. 484 OF 2023

VAIJNATH UTTAMRAO JAGADE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Mr. Jadhav Arvind Gangadhar, Advocate for the Petitioner

Mr. C. V. Bhadane, APP for Respondent State

Mr. V. N. Dhavse hfor Mr. V. S. Undre, Advocate for Respondent
Nos. 2 to 10

Mr. S. V. Jadhavar h/for Mr. S. S. Thombre, Advocate for
Respondents 11 and 12.

CORAM : Y. G. KHOBRAGADE, J.

Dated : 16th December, 2024

PER COURT :-

1. When this Court asked a question to the learned counsel for the Petitioner about maintainability of the present Writ Petition under Article 226 of the Constitution of India challenging the order dated 12.01.2023 passed by the learned Additional Sessions Judge-2, Parbhani in Cri. Revision Application No. 124 of 2022, arising out of the order dated 23.09.2022 passed by the learned JMFC, Purna in Criminal M.A. No.102/2022, the learned counsel for the Petitioner initially sought time and when this Court shown disinclination to grant adjournment, the learned counsel appearing for the Petitioner submitted that this Court may pass appropriate order.

2. Needless to say that Article 226 of the Constitution of India Provides as under:

226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

[(1-A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."; was inserted after 15th Amendment]

(2)The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the scat of such Government or authority or the residence of such person is not within those territories.

(3)Where any party against whom an interim order, whether by way of injuncion or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without--

(a)furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32

3. The impugned order dated 12.01.2023 is passed by the learned Revisional Court by invoking powers under section 397 of the Criminal Procedure Code and thereby affirmed the order dated 23.09.2022 passed by the learned JMFC, the order. Since, the order which has been passed in Criminal Revision by invoking section 397 of the Criminal Procedure Code has been impugned in the Petition, the Criminal Writ Petition is not maintainable by invoking Article 226 of the Constitution of India. Therefore, the Criminal Writ Petition is dismissed on the ground alone.

(Y. G. KHOBRAGADE, J.)