

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

CRIMINAL WRIT PETITION NO. 41 OF 2024

Aslam Alamgir Ali Malkani

...Petitioner

Versus

State Of Maharashtra And Ors.

...Respondents

....

Mr. A.A. Siddique a/w Mr. Choudhari Moin i/by Siddique & Associates,
Advocate for the Petitioner.

Mr. Arfan Sait, APP for Respondent-State.

D. Dhole, ACP, Special Executive Magistrate, Dindoshi, Mumbai.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th JANUARY, 2024.

P.C.:

1. The Petitioner is facing the proceedings under Section 107 of Cr.P.C. initiated by Respondents vide Notice and Order dated 1st February, 2023 under Section 111 of Cr.P.C. for invoking action under Section 107 of Cr.P.C. The show cause notice dated 1st February, 2023 indicated that non-cognizable Complaint No.2792 of 2022 was registered against the Petitioner on 16th November, 2022 and non-cognizable Complaint No.2329 of 2022 was recorded on 20th September, 2022. The notice also refers to First Information Report (for short 'FIR') registered with Dindoshi Police Station vide C.R. No.237 of 2021 for offences under Sections 326,

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354, 506(2), 109 and 34 of Indian Penal Code (for short 'IPC').

2. Pursuant to issuance of the said notice, the Petitioner had appeared before the Special Executive Magistrate for the purpose of enquiry. The proceedings had commenced. Statements of witnesses were recorded. Since the proceedings could not be concluded within a period of six months the Special Executive Magistrate vide Order dated 18th August, 2023 extended the time to conclude the proceedings by three months.

3. The Petitioner had preferred Criminal Writ Petition No.2798 of 2023 before this Court with grievance that there was no separate Order passed under Section 111 of Cr.P.C. and vague Order dated 1st February, 2023 without mentioning the substance of allegations was served upon him. Vide Order dated 25th August, 2023 impugned proceedings were stayed. The said Petition was disposed off vide Order dated 30th October, 2023 by permitting the Petitioner to withdraw the said Petition, with liberty to challenge the adverse Order, if any, passed in the proceedings after he participated in said chapter case proceedings.

4. The Petitioner preferred Criminal Writ Petition (St) No.21201 of 2023. The said Petition was disposed off vide Order dated 6th December, 2023. The Order indicate that the Petition was

withdrawn with liberty to approach the concerned authority pointing out that the period for completing the inquiry is already over.

5. Pursuant to Order dated 6th December, 2023, the Petitioner preferred an application before the Special Executive Magistrate with prayer to terminate the proceedings initiated under Section 107 of Cr.P.C. on ground that period to conclude the proceedings in accordance with Section 116 of Cr.P.C. has come to an end and the proceedings had lapsed.

6. The Special Executive Magistrate passed Order dated 29th December, 2023, observing that the Petitioner had remained absent on several occasions and that he had preferred Petitions before the High Court which caused delay in concluding the proceedings and hence the application is rejected and the proceedings were continued.

7. Learned Advocate for the Petitioner submitted that the Order dated 29th December, 2023 is contrary to law. It does not mention the period for which the proceedings are continued. It is in violation of Section 116(6) of Cr.P.C. The Special Executive Magistrate was required to pass Order extending the time to conclude proceedings by assigning reasons. The notice was issued

on 1st February, 2023. Since the proceedings could not be concluded within a period of six months, the Special Executive Magistrate had extended time vide Order dated 18th August, 2023 period of three months. The period of three months had expired and in the absence of any Order extending the time to continue the proceedings, the chapter case proceedings cannot continue due to lapse of period in accordance with Section 116(6) of Cr.P.C.

8. Learned Advocate for the Petitioner has relied upon the following decisions :

- i. Sandeep Shivaji Mhatre V/s. The State of Maharashtra And Anr.¹*
- ii. Dattaram Krishna Pedamkar V/s. State of Maharashtra And Anr.²*
- iii. Paleti Rama Rao V/s. State of Andhra Pradesh³*

9. Learned APP Mr. Sait submitted that the Order dated 29th December, 2023 assigns reasons for rejecting the application preferred by the Petitioner. The Roznama of the proceedings would indicate that the Petitioner was absent on several occasions. The Petitioner had preferred the Petition before this Court challenging

1 Criminal Writ Petition No.1320 of 2014 dated 23rd April, 2014

2 Criminal Writ Petition No.25 of 2009 dated 22nd April, 2009

3 Criminal Writ Petition No.6891 of 2019 dated 10th January, 2020

the proceedings and this Court had granted stay to the proceedings vide Order dated 25th August, 2023 and the stay continued till the disposal of the said Petition. The Period of about two months and seven days will have to be excluded from calculation as the proceedings were stayed by this Court. The said aspect is reflected in Order dated 29th December, 2023. He relied upon the decision of this Court in the case of ***Dwarkanath Ramchandra Angachekar and others V/s. The State of Maharashtra and another***⁴

10. Undisputedly, the notice and Order under Section 111 of Cr.P.C. was issued on 1st February, 2023. The enquiry had commenced after the Petitioner had appeared before the Special Executive Magistrate. As the period of six months was over, it was extended by three months by Order dated 18th August, 2023. The proceedings were stayed by this Court vide Order dated 25th August, 2023 and the said Petition was disposed on 30th October, 2023. The period of three months from 18th August, 2023 had expired. The Application preferred by Petitioner on the issue of lapse of time was rejected by the Special Executive Magistrate. There was no separate decision by the authority extending time after it has expired. If the Respondent was of the opinion that Petitioner has caused delay for any reason including stay granted

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by High Court, the Special Executive Magistrate could have extended time by assigning such reasons. The reasons are reflected in Order rejecting Application preferred by Petitioner.

11. The Order dated 29th December, 2023 was passed while rejecting the application for dropping the proceedings preferred by the Petitioner on the ground that the period to conclude the proceedings as come to an end. That Order is not in accordance with Section 116 (6) of Cr.P.C. The said Order refers to the fact that the the Petitioner was absent on some dates and preferred Petitions in High Court. Absence on some occasions would not mean that the Petitioner has never participated in the proceedings. Undisputedly, some witnesses were examined.

12. Section 116(6) reads as follows :

“Section 116(6) - The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention”.

13. In the case of *Sandeep Shivaji Mhatre (supra)*, it was observed that proceedings under Section 107 of Cr.P.C. were initiated without adhering to the procedure provided under the Code. The Special Executive Magistrate has totally deviated from the procedure provided under the Code. In the case of *Dwarkanath Ramchandra Angachekar and others (supra)*, it is observed that having regard to the provisions of Section 112 and Sub-Section (1) of Section 116, and the fact that a summons procedure is prescribed for an enquiry by Sub-Section (2) of Section 116 it would appear that in the case of a person who is present in Court when the Order under Section 111 is passed the said Order must be read over to him and the substance thereof explained to him if so desired by him, on that very day and therefore the inquiry in his case shall be deemed to have commenced on that very day irrespective of the fact whether the Magistrate records his plea or not.

14. In the absence of any Order under Section 116(6) the proceedings cannot continue. The Special Executive Magistrate has nowhere contended a passed any Order directing extension on the ground that proceedings were stayed by High Court for about two months. Vide previous Order dated 18th August, 2023 extension of

three months was granted. That period now it cannot be contended that the period of three months is not over in view of stay granted by this Court. Even in the Order dated 29th December, 2023, the Special Executive Magistrate has not stated that due to stay granted by this Court the period of three months has not lapsed. Hence, the impugned proceedings stands lapsed and cannot continue further.

ORDER

- i. Criminal Writ Petition No.41 of 2024 is allowed;
- ii. The Order dated 29th December, 2023 passed by Respondent No.3 is quashed and set aside and the proceedings pending before the Court of Special Executive Magistrate in Chapter Case No.37 of 2023 are quashed and set aside.
- iii. Petition stands disposed off.

(PRAKASH D. NAIK, J.)