

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4653 OF 2023
IN
CRIMINAL APPEAL NO. 436 OF 2013

Vijayan Sikarwar ...Applicant
vs.
The State of Maharashtra ...Respondent

Ms. Sharon Patole a/w Mr. Soham Panse - Advocate for the Applicant
in IA.

Mr. V. N. Sagare - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 06th MARCH 2024

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP.
2. She claims that they have tried to serve learned Advocate for the Appellant-Complainant however service could not be effected for the reason that the learned Advocate has returned the papers. There is prayer for cancellation of the warrant issued under Section 390 of the Criminal Procedure Code. It is true that on 13/02/2013 while granting the leave, this Court has initiated action under Section 390 of the Criminal Procedure Code.

3. This Court has made it very clear what is meant by action under Section 390 of the Criminal Procedure Code. The learned Magistrate is bound to act as per those directions. The Applicant-accused is at liberty to place a copy of that Order before learned Magistrate.

4. The Applicant claims to be resident of Gwalior and he was informed by the Police about the warrant. The difficulty faced by the Applicant is non-availability of the record before the trial Court because record is called by this Court. This difficulty can be solved by asking the Applicant to produce the following documents:-

- a) The copy of the judgment of the acquittal passed by the trial magistrate.
- b) The copy of the memo of the appeal.
- c) Any other documents on which the Applicant wants to rely

5. It is absolutely necessary to make an application for cancellation of the warrant before the learned Magistrate. There is a reason for the same. Because bail has to be furnished and it can be done by the trial Court only. In view of that the following directions:-

- a) Let the Applicant-accused may approach the concerned Court of the Metropolitan Magistrate, Vikhroli and to apply for cancellation of the warrant.
- b) He is at liberty to produce necessary documents as mentioned

above.

- c). The learned Magistrate to decide that prayer and to release the Applicant on bail on furnishing the Personal and Surety bond of the necessary amount. There is no need to hear the complainant.

6. Interim Application No. 4653 of 2023 is disposed of filed by the accused no. 2.

**INTERIM APPLICATION NO. 4654 OF 2023
IN
CRIMINAL APPEAL NO. 436 OF 2013
(Not on board. Taken on board)**

Sanjay Singhal and Anr.

...Applicants

vs.

The State of Maharashtra

...Respondent

Ms. Sharon Patole a/w Mr. Soham Panse - Advocate for the Applicant in IA.

Mr. V. N. Sagare - APP for the Respondent-State

1. Heard learned Advocate for the Applicants who are shown as the proposed Respondents in memo of the appeal. This Court while granting leave on 13/02/2013 has made certain observations about certain findings recorded by trial magistrate while acquitting the Respondent No. 1-Company and No. 2-Director. So also there was direction to initiate action under Section 390 of the Criminal Procedure Code. Action has to be initiated against the Respondents.

2. By way of this application, they are claiming for deleting their names from the memo of the appeal. They have further prayed for staying action under Section 390 of the Criminal Procedure Code. For deleting the names of the Applicants from array of the Respondents, the Appellant – Original Complainant needs to be heard.
3. Prima-facie, I feel that action under Section 390 of the Criminal Procedure Code can only be initiated against the original accused. At this stage these observations are sufficient and if there is an occasion for these applicants, they can move the trial court and show these observations.
4. When query is put whether the learned Advocate is able to justify on what basis, there is an apprehension of arrest in pursuance to the action under Section 390 of the Criminal Procedure Code, she is unable to point out material averments from the application.
5. So let issue notice to the Appellant. At the same time, private notice is allowed and service affidavit be filed.
6. Matter be kept on **08th April 2024.**

[S. M. MODAK, J.]