



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.173 of 2024

Wasudeo s/o Kanduba Bawaskar

vs.

Vandana (Wasudev Bawaskar)

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. C.V. Bhadane, Advocate for the Petitioner.

CORAM : M.W. CHANDWANI, J.
DATE : 11th MARCH, 2024.

Heard.

02] By the present petition, the petitioner challenges the order dated 18/12/2020 whereby the learned Magistrate has restored the proceedings filed by the respondent under Section 125 of the Code of Criminal Procedure (Cr.P.C.), which was dismissed in default. The order was carried in revision. The learned Additional Sessions Judge also dismissed the revision application that there is no provision to restore the application filed under Section 125 of Cr.P.C.

03] The contention is that the learned Magistrate has no power to recall his own order. According to the learned Counsel for the petitioner, once the learned Magistrate has passed the order, the same cannot be altered except to correct a clerical or arithmetical error in view of Section 362 of Cr.P.C. It is the settled position of law that the proceeding under Section 125 of Cr.P.C. is a quasi civil proceeding and the provisions of the Code of Civil Procedure, including Order IX Rule 9, are also applicable to it. Further, the learned Magistrate has mentioned the decision of the Supreme Court in the case of Sanjeev

Kapoor vs. Chandana Kapoor and others, wherein it has been held that the learned Magistrate does not become *functus officio* after passing an order under Section 125 of Cr.P.C., and relying on the said decision of the Supreme Court, the learned Magistrate has rightly restored the application, which was dismissed in default. Even, the learned Additional Sessions Judge has rightly dismissed the revision. No interference is required in the orders impugned. Even, no case is made out for issuance of notice before admission.

04] The writ petition stands dismissed.

JUDGE

**sandesh*