

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

Criminal Writ Petition No.5341 of 2024

Bharat Narayan Shalgaonkar ... Petitioner
V/s.
The State of Maharashtra ... Respondents

Mr. Kuldeep Nikam	Advocate for the Petitioner.
Mr. H.J. Dedhia	APP for the State.

CORAM : S.M. MODAK, J

DATE : 7th July 2025.

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Heard learned Advocate Nikam for the Petitioner who is an Advocate representing the accused person in a trial going on before the Court of JMFC, Tasgaon. Also heard learned APP.

2. The cause of action for filing this petition is the observations made by learned Magistrate about the conduct of the Petitioner. That is why this petition for expunging those remarks.

3. There was a trial of R.C.C. No. 30/2017 going on before the learned Magistrate on 7th February 2024. The case was fixed for cross-examination of PW No.1- Gayatri. Her chief examination was

over and she was also cross-examined to certain extent of 3rd January 2024. Cross-examination was adjourned because the defence was not supplied with the statements of witnesses recorded under Section 164 of the Code. What prompted learned Judge is events that took place on 7th February 2024. They are recorded in the order. They are as follows:

- (a) When the matter was called out and witness was present, the Petitioner was not present.
 - (b) Considering the personal difficulty of the witness, the Court adjourned the matter and asked the witness about entitlement to allowance. Soon after the witness left the Court, one Sutar who is Clerk of the Petitioner appeared and informed that the Petitioner has left from Sangli and he will reach within a short period. The witness has already left, Court observed presence of the Petitioner is not material. At that stage, the Court asked Mr. Sutar to file adjournment application.
 - (c) Within 5 minutes the Petitioner appeared before the Court and shown his readiness to proceed with the cross-examination.
4. The submission is at this juncture either the Court could have

imposed the witness cost or could have really adjourned the matter. Instead of that it seems that verbal exchange of words took place between learned Judge and the Petitioner. The exchange of words have reached to such a stage that learned Judge has made certain observations about the conduct of the Petitioner. Learned Judge observed that the Petitioner started shouting loudly and even that learned Judge is making false allegations against him and his Clerk. It is but natural for the learned Judge to form an opinion as to how come the Petitioner can reach the Court within 5 minutes after his clerk Sutar has submitted that he has left Sangli. On this background, the learned Judge has made certain observations about the consequences which will follow if the Petitioner will behave in such a manner.

5. **These observations are as follows:**

*“Thus considering the entire behaviour and scene created by Advocate Shalgaonkar, he was not at all punctual and also didn’t following decorum of the Court. Therefore, Advocate Shalgaonkar is hereby directed that, he shall not behave in such manner henceforth. **Failure of which his behaviour will be viewed seriously and necessary action will be taken against him i.e. by issuing notice.**”*

6. According to Mr. Nikam these observations are unwarranted and he relied upon the observations in the case of *Neeraj Garg v/s. Sarita Rani and others*.¹. The Hon'ble Supreme Court has opined about how the criminal justice system works and **what are the duties of a Judge and also of Law officers**. In that case the remarks are expunged for the reason the Officer was not given an opportunity of hearing and those remarks were prejudicial and unjust.

7. This Court feels that once the Petitioner has accepted the brief, he is supposed to attend the Court on time particularly when the **witness is under cross-examination**. It is submitted that the Petitioner on that day had attended District Court, Sangli and after finishing work he was supposed to go to Tasgaon. One can understand in Court all the things do not take place as per one's expectation because it depends upon number of factors. **In fact, this situation could have been avoided.**

8. It seems after that matter is adjourned and the witness has left, particularly when the Petitioner reached the Court and made certain

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submissions. There was hot exchange of words between the Judge and the Petitioner. It is difficult to ascertain what were the exchange of words in between them. Ultimately, smooth functioning of the Court depends upon the co-operation of Prosecutor and the defence Advocate. Ultimately, the Judge is a Captain and he has to control the Court functioning. It is but natural that the female witness is put to inconvenience due to adjournment of the matter.

9. In fact this situation could have been avoided, if both of them would have dealt with the situation in a different manner. There ought to have been restraint not only from the side of the Petitioner but also from the side of learned Judge. The Advocate may loose the temper but it is not permissible as far as possible for a Judge. Ultimately, there cannot be smooth functioning of the Court unless and until, there is co-operation from the Advocate who appears in the said matter. Similarly, the Advocate who has accepted brief is supposed to attend the Court punctually. Ultimately, a particular Advocate has to adjust his diary and to give priorities to the matters fixed on a particular date.

10. Be that as it may, “the observations about the consequences which would follow in future if the conduct of the Petitioner will continue” are totally unwarranted.

11. The learned Judge was not justified in observing that necessary action will be taken by issuing the notice. Certainly, the learned Judge ought to have kept in mind that any Advocate cannot function in such an unfriendly atmosphere. If a similar situation had arisen in future, the learned Judge could have dealt with sternly. It includes closing the cross-examination or even by imposing a heavy exemplary cost. **Warning the Advocate that notice would be issued to him cannot be justified.**

12. **With above observations, I am inclined to expunge those remarks.** Mr Nikam assures that his client-Petitioner will co-operate in the trial by remaining present punctually and in time.

13. In view of this undertaking, the Petition needs to be allowed. I bring it to notice of learned Judge that she will not keep all these events in mind and will continue with the trial in a fair manner uninfluenced by these observations.

14. In view of that following order is passed:

ORDER

- (i) The Writ Petition is allowed.
- (ii) All the observations about the conduct of the Petitioner and relating to cautioning him of the action are expunged.
- (iii) Writ Petition stands disposed of.
- (iv) Copy be sent to concerned learned Judge.

(S.M. MODAK, J.)