



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5846 OF 2025

WITH

WRIT PETITION NO. 5850 OF 2025

Amratlal Dhirajlal and Co through it ... Petitioner
partner Mrs. Parul Piyush Parekh

V/s.

Akshay Ashok Sharma and Anr. ... Respondents

Mr. Mahendra Swar with Shashank Wadke, for the petitioner.

Mr. P.P. Malshe, APP, for the State in WP/5846/2025.

Mr. K.C. Shinde, APP, for the State in WP/5850/2025

CORAM : N.J. JAMADAR, J.

DATE : 14TH NOVEMBER 2025

PC:

1. Heard learned counsel for the petitioner.
2. The challenge in these petitions is to the orders dated 8th April 2025 passed by the learned Additional Sessions Judge, whereby the learned Additional Sessions Judge has set aside the order dated 14th December 2021, passed by the learned Magistrate thereby discarding the evidence of the complainant as the complainant was not present on that day, and, also the subsequent order dated 13th September 2023, whereby the learned Magistrate declined to set aside the first order, opining that the Court has no power to review its own order.
3. Learned counsel for the petitioner submitted that the challenge

before the Additional Sessions Judge was to an order dated 13th September 2023, and not the first order dated 14th December 2021, and by the impugned order, the learned Additional Sessions Judge could not have set aside the orders which were not assailed before him.

4. The substance of the matter cannot be lost sight of. If the complainant did not appear on the scheduled date, learned Magistrate could have dismissed the complaint for want of prosecution straightaway. There was no occasion for discarding evidence of the complainant and then adjourning the matter to the next date.

5. In these circumstances, the learned Additional Sessions Judge has taken a view which advances the cause of justice.

6. In exercise of the writ jurisdiction, this Court does not find any propriety in entertaining the petition against the orders which advance the cause of justice and set aside the orders passed by the learned Magistrate which were ex-facie illegal.

7. It is well recognized the Court should not set aside an order if it is revives a wrong or illegal order. A useful reference in this context can be made to the judgment of the Supreme Court in the case of **Bhartiya Seva Samaj Trust and Anr. V/s. Yogeshbhai Ambalal Patel and Anr.**¹ wherein the aforesaid principle was enunciated :

“14. It is a settled legal proposition that the Court should not set aside the order which appears to be illegal, if its effect is to revive another illegal order. It is for the reason that in such an eventuality, the illegality would perpetuate and it

1 (2012) 9 SCC 310

would put a premium to the undeserving party/person.”

8. In the case of **Al-Can Export Pvt. Ltd. V/s. Prestige H.M. Polycontainers Ltd. and Ors.**², the Supreme Court again expounded the said enunciation of law, as under :

99. It is a well settled principle in law that issuance of a writ or quashing / setting aside of an order if revives another pernicious or wrong or illegal order then in that eventuality, the writ court should not interfere in the matter and should refuse to exercise its discretionary power conferred upon it under Article 226 of the Constitution of India. The writ court should not quash the order if it revives a wrong or illegal order.”

9. Thus, the Writ Petitions stand dismissed.

(N.J. JAMADAR, J)

² (2024) 9 SCC 94