



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

CRIMINAL WRIT PETITION NO.121 OF 2023

SMITA YASHWANT LIPTE
VS
SURYAKANT S/O SADASHIVRAO ARADE

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

Court's or Judge's order

Mr.S.N. Singh, Advocate for the petitioner/s
Mr. A.T. Purohit, Advocate for the respondent

CORAM : ANIL S. KILOR, J.

DATE : 03rd FEBRUARY, 2025

1. The order below Exh. 20 dated 14.12.2022 passed by the learned Addl. Sessions Judge, Chandrapur in Criminal Appeal No.70 of 2013 is under challenge, whereby the learned Addl. Sessions Judge rejected the application filed by the petitioner under Section 391 of the Code of Criminal Procedure (CrPC) for leading additional evidence on record.

2. This is the second round of litigation before this Court. In the earlier round, this Court vide judgment order dated 16.11.2022 passed in Criminal Writ Petition No.415 of 2022 set aside the order rejecting the application under Section 391 of the CrPC dated 16.02.2022 and directed the learned Addl. Sessions Judge to decide the application Exh.20 afresh on or before 30.12.2022 and accordingly, the impugned order came to be passed.

3. I have heard the learned counsel for the respective

parties.

4. The learned counsel for the applicant points out that the order is without reason.

5. Whereas, the learned counsel for the respondent has pointed out that the learned Addl. Sessions Judge has categorically observed in the order that he is of the opinion that there is no admission to the effect that partnership firm is in existence between the appellant and the respondent. It is submitted that the cross examination, which is referred and reproduced in the impugned order, in paragraph 1, is relating to different transaction and not relevant in the present matter.

6. It is argued that the petitioner failed to establish or point out that the partnership firm is in existence and therefore, the learned Sessions Judge has rightly rejected the application.

7. In the backdrop of the submissions made by the learned counsel for the respective parties, I have perused the record and gone through the impugned order.

8. The learned Addl. Sessions Judge in first five paragraphs of the impugned order recorded certain facts and the submissions of the learned counsel. The Appellate Court has also reproduced relevant portion of the cross-examination recorded in a suit filed by the respondent.

9. The ultimate findings are recorded in paragraph 6, which reads thus:

“6] I have heard learned counsel for the appellant at length also heard learned counsel for the respondent. It required to be noted that as per the instant application, the appeal may be permitted to produce the evidence of the respondent in Summary Case No.09/2009 specifically with reference to the part of his cross-examination as quoted above. I have perused the complaint filed by the respondent, it required to be noted that in the said complaint the respondent has the case of hand-loan. According to the appellant the respondent has denied the existence of partnership firm. Therefore, his evidence is summary suit No.09/2009 is necessary to be produced on the record. That evidence is recorded after disposal of the complaint under section 138 of the N.I. Act. However, considering the part of cross-examination of the respondent in summary suit No.09/2009 as quoted in this application, I am of the opinion that there is no any admission as to existence of the partnership by the respondent. Therefore, in my opinion, it will be futile exercise to allow this application. It is not necessary to allow the appellant to adduce such type of evidence under section 391 of Cr.P.C. Therefore, in my opinion the instant application is liable to be rejected. ...”

10. From the above referred paragraph and paragraph Nos.1 to 5 of the order, it is difficult to find out what is the material which weighed with the learned Addl. Sessions Judge to arrive at a conclusion that no partnership firm was in existence between the appellant and the respondent.

11. Thus, it is evident that the impugned order is short of sufficient reasons to arrive at a definite conclusion.

Accordingly, I am of the opinion that the impugned order needs to be quashed and set aside with a direction to the learned Addl. Sessions Judge to decide the application Exh.20 afresh within stipulated period. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The order below Exh.20 dated 14.12.2022 in Criminal Appeal No.70 of 2013 is hereby quashed and set aside and the matter is remanded back to the learned Addl. Sessions Judge, Chandrapur to decide the same afresh, after considering the material available on record.
- (iii) The learned Addl. Sessions Judge, Chandrapur is expected to decide the application within one month from the date of submission of certified copy of this order.

12. Needless to mention that this Court has not observed anything on merits.

(ANIL S. KILOR, J.)