



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

CRIMINAL WRIT PETITION NO. 366 OF 2023

[Digambar S/o Nagoji Bhalerao and ors. **vs.** The State of Maharashtra,
through P.S.O. Khandala, Post Khandala, Tq. Pusad, Dist. Yavatmal and ors.]

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

Court's or Judge's orders

Mr. R. R. Gour, Advocate for the petitioners
Mr. S. S. Doifode, APP for the State/respondent nos. 1 and 3
Ms. Anjana M. Raut, Advocate for respondent no. 4

CORAM: ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.

DATED : 20-09-2025.

Heard.

2. The petitioners – original accused have preferred the petition under Article 226 of the Constitution of India seeking following prayers :-

- “(i) call for the record of the Criminal Appeal No. 28/2012 from the file of the Additional District Judge, Pusad, Dist. Yavtmal ;*
- (ii) quash and set aside the impugned judgment dated 31/03/2023 (Annexure-D) passed by Additional District Judge, Pusad, District Yavtmal in Criminal Appeal No. 28/2012, in the interest of justice ;*
- (iii) conduct the enquiry in respect of the proceedings and the judgment passed by the passed by Additional District Judge, Pusad, District Yavtmal in Criminal Appeal No. 28/2012 dated 31/03/2023 ;*
- (iv) take legal action against the respondent No. 1 to 4 for committing deliberate legal wrong to harass the petitioners as mentioned in the petition ;*
- (v) saddle heavy cost upon respondents including the compensatory loss and damaged caused to the*

petitioners ;

(vi) grant any other relief which deemed fit including that of the costs in the facts and circumstances of the present case.”

3. The petitioners have questioned the legality of the judgment dated 31-3-2023 passed by the Additional Sessions Judge, Pusad, District Yavatmal in Criminal Appeal No. 28/2012. By the said judgment, learned Additional Sessions Judge has remanded Regular Criminal Case No. 49/2006 back to the Judicial Magistrate First Class (Court No. 2), Pusad. The reason for remand is that the learned trial Court did not afford opportunity to the prosecution to lead evidence. It appears that the trial Court has examined a single witness i.e. panch witness and on the same day, closed evidence of its own. The trial Court then dispensed with statement of accused under Section 313 of the Code of Criminal Procedure, 1973 and pronounced the judgment.

4. The appellate Court has referred to the judgments of the Supreme Court and Gujarat High Court to render a finding that since Magistrate has not given an opportunity to the victim to lead evidence, it will be appropriate to remand the case back to the Magistrate so that opportunity to lead evidence should be given to the prosecution.

5. Learned Additional Public Prosecutor (APP) submits that the course adopted by the appellate Court is in the light of well settled principles of law and, therefore, no interference is called for in the impugned judgment. We accede to the submissions so made by the learned APP.

6. There appears no reason from the record as to why should learned trial Court not afford opportunity to the

prosecution to lead evidence and why trial Court should rush to close the evidence of its own. It is worth mentioning here that on earlier date, before the trial Court, the witnesses were present but the Court itself was on leave and, therefore, injured witnesses could not be examined. When on next date, the Court resumed duty, a single witness was examined i.e. panch. The trial Court did not give opportunity to the prosecution to lead further evidence. That being so and since the trial Court failed to discharge its duty, the first appellate Court has rightly remanded the case back to the trial Court.

7. Despite such well reasoned finding, the petitioners – original accused approached this Court by making learned Additional Sessions Judge as party respondent no. 2 in person. This Court vide order dated 14-7-2023 permitted the petitioners to delete his name. The petitioners, however, did not seek to delete the allegations made against the learned Judge as also the prayer.

8. The argument of petitioners is that the State had also preferred appeal before the High Court being Criminal Appeal No. 412/2013 challenging the judgment of acquittal passed by Judicial Magistrate First Class. The High Court dismissed the appeal. According to the petitioners, despite such status, the Sessions Court allowed the appeal and thus, committed contempt of court. According to the petitioners, such a finding has resulted into suffering heavy losses, which cannot be compensated in terms of the money. The petitioners then continued with the prayer to conduct enquiry in respect of proceeding and the judgment passed by the Additional Sessions Judge.

9. Firstly, we do not find any error having been committed by the Sessions Court in entertaining appeal filed by

the victim. In fact the Sessions Court has taken note of the appeal preferred by the State and assigned following reasons in paragraph no. 9 of the judgment :

*“09] In this case State has preferred appeal before the Hon’ble High Court, which came to be dismissed. In case of **Bhavubel Makwana Vs. State of Gujarat**, the Hon’ble Gujarat High Court had framed questions for consideration :*

1] Whether an appeal filed by the victim, invoking his right under proviso to section 372 of Cr.P.C., challenging acquittal is not maintainable, on the ground that the State has filed an appeal against the same order and for the same purpose ?

While discussing this issue, the Full Bench observed that the Legislature had conferred a substantive statutory right of appeal and such a right could not be diluted by a judicial pronouncement since the right of a party to file an appeal is an independent, substantial and statutory right. In light of different type of right of appeal provided to the victim and to the State, it will not be proper to hold that the right of either of them is dependent upon the others. To put it differently, only victim can file an appeal against an order of imposing inadequate compensation in addition to his right of appeal against acquittal or conviction. Therefore, it is a statutory right of victim not subservience to the rights of the State to file an appeal. It was concluded that each victim has an independent right of appeal. In other words, both the victim and the State can file appeals independently. Thus, the Hon’ble Gujarat High Court held that appeals filed by the victim are maintainable.”

10. Thus, the Court held that the victim has statutory right to file appeal. That being so, it could not have been said by the petitioners that the Sessions Court could not have entertained appeal and remanded the matter back to the trial Court.

Merely because the High Court had dismissed the appeal preferred by the State, the findings rendered by the Sessions Court cannot be taken as contemptuous.

11. We have gone through the judgment dated 15-11-2021 passed by this Court in Criminal Appeal No. 412/2013 to find that the correct facts were not pointed out to the Court, rather, this Court was made to believe that prosecution led evidence of only panch witness related to spot panchanama. It appears that the trial Court noted in paragraph no. 7 of its judgment that despite opportunity, neither the informant nor any other eye witness remained present to lead evidence. Thus, the State failed to point out to the High Court the fact that on previous date, the witnesses were present before the trial Court. According to the victim, the witness, namely, Sheshrao Rathod was present before the trial Court on 20-4-2010. It was only because the Court was on leave, he was not examined. The victim then pointed out that on next day, the learned trial Court examined only panch witness and *suo moto* closed the evidence and pronounced judgment on the same day by dispensing with the statement of accused.

12. Learned counsel for the petitioners failed to show us from the record any contrary position of fact as noted by the Sessions Court in paragraph no. 8 of its judgment which is spelt out above.

13. That being so, there is no merit so far as challenge to the judgment passed by the Sessions Court is concerned. As regards allegations against learned Judge, the petitioners, though sought permission to delete his name, continued to make reckless allegations of contemptuous act and further sought enquiry against the judicial officer. Such allegations and prayer without any material is uncalled for, for the simple

reason that the learned Judge has discharged his duties by rendering a judgment in an appeal preferred before him.

14. In a given case, the appellate Court may commit mistake in arriving at a particular conclusion, that by itself cannot be a ground to make allegation of contemptuous act by the learned Judge, who has performed his duties.

15. In such circumstances, the course that was available to the petitioners was to challenge the judgment which they had. They, however, made reckless allegations as also the prayer, which according to us, require deprecation and one of the ways of doing so is to impose exemplary costs. The petition is accordingly dismissed with costs of Rs. 25,000/- to be paid by the petitioners within two weeks from today. The costs shall be deposited with the Registry, failing which, the Registry shall proceed to recover the costs as land revenue. The costs, once deposited, shall be paid to respondent no. 4 – victim.

(S. S. THOMBRE, J.)

(A. L. PANSARE, J.)