



Judgment

wp874.22

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

CRIMINAL WRIT PETITION NO. 874 OF 2022.

Kumbharam Mesaram Chaudhary,
Aged 41 years, Occupation Business,
resident of Nandura, Tahsil Nandura,
District Buldhana .

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PETITIONER.

VERSUS

1.State of Maharashtra,
through Police Station, Malkapur,
District Buldhana.

2.Mohasin Khan,
Aged 55 years, Occupation Service
as Police Constable, Driver, Police
Station, Nandura, District Buldhana.

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RESPONDENTS

Mr.S.S. Deshpande, Advocate for the Petitioner.
Mr. B.M. Lonare, A.P.P. for Respondent No.1.
Mr.A.Ananthakrishnan, Advocate for Respondent No.2.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 16, 2025.

Rgd.

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith and by consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The petitioner is challenging the revisional order passed by the Additional Sessions Judge, Malkapur in Criminal Revision Application No.2/2022 dated 10.08.2022. Contention is, that though the impugned order was passed on merits, the parties are not heard by the revisional Court. The same statement appears to be true.

3. In paragraph no.12 of the said order it is observed “*After going through the evidence, it can be seen that there is no substance in the allegations made by the complainant. The allegations of detention and bribe are not prima facie reliable*”. The observations of the Additional Sessions Judge are prima facie against the settled law, for the reason that at the stage of issuance of process wherein the material placed before the concerned Court is required to be Rgd.

considered, it is not permissible to see whether the allegations are true or false. If the offence is made out on the basis of the allegations, then further course is available to the concerned Court. Prima facie it appears that the Revisional Court has erred in observing that there is no substance in the allegations made by the complainant and the allegations of detention and bribe are not prima facie reliable, which cannot be considered at the stage of issuance of process. Further, it is to be noted that it appears from the order itself, and according to the petitioner, initially the case was listed before the District Judge-1 on 16.07.2022, however, it was transferred to other Court on 30.07.2022, and it was listed before the Additional Sessions Judge on 10.08.2022, therefore, he was not able to appear before the said Court, as it was not within the knowledge of the Counsel that the case was transferred to other Court.

4. Considering the above facts and circumstances, I am inclined to allow the petition by setting aside the judgment and order passed by the Additional Sessions Judge, Malkapur in Criminal Revision Application No.2/2022 dated 10.08.2022, accordingly the
Rgd.

same is set aside. The matter is remanded back to the Additional Sessions Judge, Malkapur with a direction that after hearing the parties, it shall decide the matter afresh, keeping in view the settled position of law.

5. Rule is made absolute in aforesaid terms.

JUDGE