

(1985) 06 BOM CK 0027

In the Bombay High Court

Case No : Criminal Revision Application No. 132 of 1984

Mangal Vithal Koyale

APPELLANT

Vs

Gopalrao Bhimrao Koyale and Others

RESPONDENT

Date of Decision : 12-06-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 65

Citation : (1986) 2 BomCR 639

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : Pradeep Deshmukh, for the Appellant; R.M. Borde, for respondent Nos. 1 to 3 and Public Prosecutor, for the Respondent

Judgement

Sharad Manohar, J.—The order passed by the learned Magistrate discloses nothing, but dereliction of duty on his part to such an extent that the order has scandalised this Court. I am extremely unhappy to make observation of such a character against my own Subordinate Judge. But the order passed by the learned Magistrate leaves me no other option.

2. The facts are very simple.

The present petitioner is the wife on one Vithal, who is the son of respondent Nos. 1 and 2 and the brother of respondent No. 3. Evidently, she is recently married to Vithal. Her contention is that her in-laws have been torturing her for not bringing any dowry to fill in their coffers. She contends, on 19-2-1983 the three respondents together tried to beat the devil out of her, causing serious injuries to the extent of making her un-conscious. She further contended that after that incident, on 20-2-1983, the three accused took away all her ornaments and drove her away her houses; She had to take shelter at her father's place at Hanumantwadi and only thereafter she could file a complaint at the Police Station. The three accused were in fact arrested by the police, were produce before the Court and were thereafter released on bail. The Police made investigation, recorded statement of some persons, found enough materials for

filing charge-sheet against three accused and in fact, filed the charge-sheet against them. Even the learned magistrate found that there existed enough materials against the accused and for framing a charge against the accused and hence, even charge was framed by him against them on 13-4-1984. Since the accused placed not guilty and claimed trial, the learned Magistrate directed the trial to proceed.

3. The Asst. Public Prosecutor applied for summonses to 9 witnesses, Summonses were ordered to issue and case was posted for hearing on 22-6-1984. On this date, it was found that the witnesses were not present. Application was made for re-issued of summons to them and order to that effect was passed by the learned magistrate. The case was posted for hearing on 23-7-1984. Once again, the witnesses were absent and the summonses were re-issued. The case adjourned for hearing to 23-9-1984. On this date, once again the witnesses were not present. Neither the Asstt. Public Prosecutor nor the learned Magistrate seem to have bothered to enquire as to why the summonses were not being responded to. All that the learned Assistant Public Prosecutor did was that he repeated his application for re-issuance of summons. The learned Magistrate took objection to such application; but what he did was that believing that the summonses were disobeyed by the witnesses for the prosecution, he passed an order in favour of the accused acquitting all the them.

4. Mr. Deshmukh, appearing for the petitioner, has invited my attention to the fact that in the place there is a mystery about the issuance of summonses by the office itself in the first place. He pointed out the reply given by the office of the trial Court to his application for certified copies of the summons issued to the witnesses. Mysteriously enough, it appears that the issuance of the summons by the office of the Court is itself extremely doubtful. It is well-known that summonses are issued by the office to any witnesses, they are prepared in duplicate; one of them is sent to the witness or the party and the other is retained by the office with itself. Application was made on behalf of the petitioner for copies of the summonses retained by the office; but the only cryptic reply received from the office is that in the relevant file neither any summons nor any report regarding services of any summons was located. The petitioner was informed that in these circumstances no copy of any of the summonses could be supplied to the petitioner. This means either that the office has been remiss in the matter of issuance of the summonses or that there has been some other foul play.

Whatever that may be. The point is that when the learned Magistrate found in spite of the issuance of the summonses, the witnesses were not present, he should have seen to it that two conclusions are possible:---

(a) the witnesses have not received the summonses at all, and

(b) that they have received the summonses, but have decided to disobey them for one reason or the other.

In the first place, it was the duty of the Court to institute inquiry as to whether and why the summonses were not served upon the witnesses. If the summonses were not served, it was the bounded duty of the Court to see to it that they were served. If, on the other hand, if it was found that summonses were received by the witnesses and still they had decided not to remain present in the Court, it was evident case of disobeying the order of the Court and in the case it was bounded duty of the learned Magistrate to issue warrant, if necessary non-bailable, to ensure the presence of the witnesses in the Court. The learned Magistrate has no justification to punish the complainant on account of the fault committed either by the said witnesses or by the court's own office. The order passed by the learned Magistrate evidences grave dereliction of duty on his part. I strongly disapprove of this order passed by the learned Magistrate.

5. The Rule is, therefore, made absolute. The impugned order is set aside and the matter is sent back to the trial Court for disposal according to law. In view of the fact that I have been required to pass very serious strictures against the learned Magistrate, I direct that it will be in the fitness of the things that the criminal case should be decided by some learned Magistrate other than the one who has passed the impugned order. The office is directed to send papers and this order, firstly, to the Chief Judicial Magistrate and he is directed to pass suitable order allotting this case for disposal to any Magistrate, at Latur, other than the learned Magistrate who has passed this impugned order. The learned Magistrate trying the case shall ensure the presence of all prosecuting witnesses before him, if necessary, by appropriate warrants. Since the case is very old one, the learned Magistrate is directed to dispose of the same with extreme expedition and, in any event, within 3 months of receipt of the record by him.

The Chief Judicial Magistrate is directed to pass order allotting the case to the Magistrate concerned within 15 days from the receipt of the order by him.

6. The Session Court is directed to hold an enquiry, through some learned Magistrate at Latur, into the mystery of the missing summonses and report etc., from the relevant file as is evidenced from the letter dated 11-9-1984 produced as Exh. "B" (colly) herein.

The office is directed to send a Xerox copy of the said letter to the Sessions Court along with a copy of the judgment and order, forthwith. The learned Magistrate appointed by the Sessions Court shall complete the inquiry expeditiously and shall submit his report directly to this Court on or before 25th July, 1985.