
(2013) 09 BOM CK 0209

In the Bombay High Court

Case No : Criminal Application (APL) No. 449 of 2013

Mr. Dhananjay

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 960

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Judgement

B.R. Gavai, J.—Rule. Rule made returnable forthwith. Heard with the consent of the learned Counsel appearing on behalf of the respective parties. Respondent No. 2 has been duly served. In spite of being given the notice addressed to the learned Counsel for the respondent No. 2 that the Court proposes to dispose of the present petition today, none appears for the respondent No. 2.

2. In the present case, the respondent No. 2 had lodged a report for the offence punishable under Sections 409, 420, 468, and 471 read with 34 of the Indian Penal Code vide Crime No. 414 of 2012 against Shri. A. Pathak, Authorized Officer Cooperative Bank Limited, Shrichand Popatlal Bhojwani and the present petitioner.

3. The learned Chief Judicial Magistrate, Amravati, vide order dated 3rd March, 2012, finding no substance in the allegations of the respondent No. 2, discharged accused Nos. 1, 2 and 3 from the said case. Being aggrieved thereby, the respondent No. 2 had preferred a revision before the learned Ad-hoc Additional Sessions Judge, Amravati. The said revision was allowed by order dated 1st September, 2012 thereby setting aside order dated 3rd March, 2012. Being aggrieved thereby, the present application.

4. In the revision filed by the respondent No. 2 before the Ad-hoc Additional Sessions Judge, Amravati, neither the present applicant nor the other accused persons have been impleaded as party respondents. Learned Single Judge of this

Court i.e. one of us (B.R. Gavai, J.), relying upon the judgment of the Apex Court in the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , A.K. Subbaiah and Others Vs. State of Karnataka and Others, and Section 401(2) of the Criminal Procedure Code, 1973, has taken a view that Revisional Court cannot pass any order to the prejudice of accused without giving them opportunity of hearing. Undisputedly, in the present case the order passed by the Revisional Court is prejudicial to the applicant, inasmuch as order of discharge which was passed in favour of the applicant, was set aside by the Revisional Court without giving him an opportunity of hearing.

5. In that view of the matter, the impugned order is not sustainable. The application deserves to be allowed on this short ground. Rule is made absolute in terms of prayer clause "3".