
(2013) 07 BOM CK 0003

In the Bombay High Court

Case No : Criminal Application Apl No. 736 of 2012

Sau. Minakshi and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 193

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : M.G. Sarda, for the Appellant; N.S. Rao, APP for Respondent No. 1- State and Shri O.Y. Kashid, for the Respondent

Judgement

P.D. Kode, J.—Rule. Rule made returnable forthwith. Heard finally by consent of the parties. The applicants, who are the accused in Regular Criminal Case No. 1669/2009, pending on the file of Judicial Magistrate, First Class, Court No. 4, Nagpur, have preferred this application for exercising the powers u/s 482 of the Code of Criminal Procedure for quashing and setting aside order dated 19.7.2012 passed in Criminal Revision No. 498/2011 dismissing the said application in revision preferred by the applicants for non payment of process fee.

2. The applicants had filed the said revision application challenging order dated 14.2.2011 partly allowing the application for discharge made by them. The said case was initiated upon the report filed by the Tahsil Police Station after investigation of First Information Report filed by respondent No. 2, amongst other upon allegations of the applicants and other accused having committed the offences under Sections 420, 468, 471, 419, 494 r/w 34 of the Indian Penal Code. The applicants, thereafter, preferred an application for discharge in the said case. By order dated 14.2.2011 though it was partly allowed, their prayer for discharging them from the allegations of committing the offences u/s 419 and 494 r/w 34 of the Indian Penal Code was not upheld. The applicants preferred the earlier referred revision challenging the said part of the order.

3. Shri Sarda, learned counsel appearing on behalf of the applicants, urged that the application in revision preferred by them being dismissed for default, the applicants did not receive an opportunity to test the merits of their contention that they are not liable to be prosecuted for commission of offences u/s 419 and 494 r/w 34 of the Indian Penal Code and they deserve to be discharged in view of the material collected during investigation failed to disclose their involvement in commission of such offences. It is urged that interest of justice demands giving an opportunity to the applicants, as accusation is levelled against them for the commission of an offence of serious nature. It is contended that ultimately at the conclusion of the trial if the applicants are acquitted then the same would amount to being forced to undergo the trial without themselves being even liable to be prosecuted.

4. Shri Kashid, learned counsel appearing on behalf of respondent No. 2, submitted that apparent reading of order in question, reveals that the court was forced to dismiss the application in revision due to laches on the part of the applicants and they were non diligent in prosecuting the application in revision preferred. It is urged that dismissal of the application in revision having not resulted any confirming conviction of the applicants, no prejudice would be caused to them if the order impugned is maintained and they are asked to undergo the trial.

5. Thoughtful consideration were given to the submissions advanced to ascertain merits of it for deciding the question involved, whether any case is made out for exercising powers u/s 482 of the Code of Criminal Procedure.

6. The bare glance at the order in question supports the submissions advanced of the application in revision being dismissed for default for non payment of process fee and in turn supports the submissions of learned counsel appearing on behalf of respondent No. 2 that thus reveals laches on the part of the applicants. At the same time, the same also supports the submission of the learned counsel for the applicants, of applicants having not received an opportunity to test merits of their contentions that they are not liable to be prosecuted and deserved to be discharged. However, considering the nature of the order passed, it appears that said aspects are not much relevant for deciding the question involved in this application. It appears accordingly as the order impugned reveals that the learned Sessions Judge having exercised the powers in revision by issuing notices to the opponents, has dismissed it on count of non payment of process.

7. On the said backdrop, considering the provisions of Section 397 of the Code of Criminal Procedure makes it difficult to accept that after the Court of Session exercising the powers of a revision could have dismissed the application for default. Needless to add the powers of a revision are vested with the Court of Sessions and High Court and the same are to be exercised for examining the legality, correctness and propriety of an order passed by the Lower Court. Hence, after the court exercises such power, it becomes incumbent upon the court to examine the legality, correctness and propriety of order. It can be further added

that the glance at the provisions of the Code of Criminal Procedure reveals that statutory right of an appeal conferred upon the parties for certain matters. However, the case regarding the application in revision is different. The perusal of the provisions of the Code does not reveal that any right is conferred upon parties to prefer an application in revision and the relevant provision enables them to request the court to exercise such a power.

8. As observed earlier, once such powers are exercised i.e. in the instant case by issuing the notice to the other side, then it was wholly improper on the part of the Court of their decline to exercise such power on the count of process fee being not paid. As a matter of fact, no party is given a right to be heard in the revision. Hence, even in absence of the respondents, the court would have carried out duty and examined the correctness, legality and propriety of the order impugned. The order passed by the Court of Session in crystal terms reveals that the Session Court declined to do so on the ground mentioned in an order. Such an order cannot be legally sustained.

9. The apparent glance of the provisions of Section 482 of the Code of Criminal Procedure reveals that the powers conferred upon this Court thereunder is to be exercised for the three purposes i.e.: (i) to give effect to any order under this Code, or (ii) to prevent abuse of the process of any Court, or (iii) otherwise to secure the ends of justice.

Out of the same, the last Clause denotes that though the said power is rarely exercised, the same is to be exercised by this Court for the purposes of securing ends of justice.

10. On the said backdrop, considering the events happened with regard to the revision application in question, it is difficult to accept that passing of such order can be said to be passed for securing ends of justice i.e. entertaining an application made by party for exercising powers u/s 397 of the Code of Criminal Procedure and then declining to do so on the count of process fee being not paid. Thus, the said order deserves to be quashed and set aside for securing ends of justice. Resultantly, the impugned order dated 19.7.2012 is hereby quashed and set aside with a direction to the learned Sessions Judge to decide the application in revision entertained by the Court of Session within three months of the receipt of copy of this order. The ad-interim relief granted in this petition to continue till the disposal of the said application in revision as ordered aforesaid.