

(2000) 02 BOM CK 0022

In the Bombay High Court

Case No : Criminal Writ Petition No. 1147 of 1992 in First Appeal No. 107 of 1990

Sou. Mangala Suresh Kanase

APPELLANT

Vs

Suresh Dadu Kanase and Another

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(4), 125(5), 127

Citation : (2000) 2 DMC 527

Hon'ble Judges : Ranjana Desai, J

Bench : Single Bench

Advocate : N.J. Patil, for the Appellant; Machhindra A. Patil, for Respondent No. 1, D.S. Mhaispurkar, A.P.P for Respondent No. 2-State and P.N. Karlekar in First Appeal No. 107/1990, for the Respondent

Judgement

Ranjana Desai, J.—By way of this petition, the petitioner seeks quashing and setting aside of the judgment and order dated 16.10.1991 passed by the III Addl. Sessions Judge, Kolhapur in Criminal Revision Application No. 137 of 1990 whereby, the learned Sessions Judge has allowed the revision filed by respondent No. 1 and dismissed the maintenance application filed by the petitioner.

2. Before I deal with the merits of the case, a very disturbing aspect of this case needs to be noted. By my order dated 14.1.2000, I had called for record and proceedings because for proper appreciation of the arguments of the learned Counsel it was necessary to peruse certain exhibits. The farad indicates that for compliance of my direction message was communicated to the office of the Sessions Judge, Kolhapur. On 20.1.2000 merely the pleadings of the parties were received. The exhibits filed in the Court were not received. The Registrar was, therefore, directed by me to make further enquiry. The enquiries made by the Registrar indicate that though the writ of this Court was received By the Court of District and Sessions Judge Kolhapur, that Court did not give intimation of the same to the Court of Judicial Magistrate First Class Ichalkaranji. The said Court destroyed files C and D of the proceedings which contained the exhibits.

3. This indeed is a shocking state of affairs. It is elementary that once the High Court is seized of the matter, the record in connection with the same should be preserved for the possibility of the High Court needing it for proper adjudication of the issues involved cannot be ruled out. I may note that considerable difficulty was created in the way of deciding this matter because the exhibits were destroyed. It is only because of the assistance of the learned Counsel appearing for both sides that I could gather copies of the exhibits and proceed with the matter. If what has happened in this case is repeated, it is quite possible that in some case interest of justice will suffer and irreparable harm will be caused to a litigant. It is necessary, therefore, for the Registrar to issue appropriate directions to subordinate Courts in this behalf. Since this writ petition pertains to maintenance and was filed as far back as in the year 1992 despite the difficulties created by destruction of record, I decided to proceed with the case with the consent of the learned Counsel appearing for both sides and with their assistance. At appropriate stage I will indicate the directions which the Registrar should issue to the subordinate Courts in this connection,

4. The facts, which give rise to the present petition, may be briefly stated. The petitioner was married to respondent No. 1 on 28.5.1978. It is the case of respondent No. 1 that, after marriage, the petitioner resided with respondent No. 1 at village Nandre and thereafter they resided at Bombay. The petitioner contends that respondent No. 1 was ill-treating her by demanding cash amount and articles. When she failed to comply with these demands, he drove her out of the matrimonial home. After she was driven out of the house, she made several efforts for settling the dispute. However, respondent No. 1 was not inclined to do so. For about 5 to 6 months, she resided in the house of one Advocate Khare. Her mental condition was not proper. Her mother had filed a complaint at the Mahim Police Station. She was called at the Mahim Police Station. From there her mother brought her to Ichalkaranji. Respondent No. 1 never came to Ichalkaranji to take her back. She sent a letter to him. The said letter was produced at Exh. 32. However, respondent No. 1 refused that letter. She waited for 8 to 9 years for respondent No. 1 to take her home. She, her maternal uncle and mother went to Kandivali to persuade respondent No. 1 to take her home, but he did not accept her. She has filed a petition for restitution of conjugal rights being Hindu Marriage Petition No. 114/85 in the Court of Civil Judge, Sr. Division, Kolhapur. Respondent No. 1 did not accept the summons of that petition.

5. Respondent No. 1 is working as Security Officer in B.E.S.T. Department. At the relevant time when she gave evidence, he was getting Rs. 3,000/- to Rs. 4,000/- per month as salary. She contended that he had 9 acres of land and house. The land is irrigated. Respondent No. 1 has a flat at Kandivali. On this set of facts, the petitioner filed Criminal Misc. Application No. 123 of 1988 in the Court of Judicial Magistrate First Class, Ichalkaranji, at Ichalkaranji u/s 125 of the Code of Criminal Procedure ("the Code" for short), claiming maintenance on the ground that, respondent No. 1 had failed and neglected to maintain her, that she was unable to maintain herself and that, respondent No. 1 was a man of sufficient

means. This application came to be filed on 29.7.1988. In support of her case, the petitioner examined herself and one Karbasappa Nagappa Balifadi and Indubai Raghuvir Ingle, her mother. Respondent No. 1 examined himself on oath. After perusing the evidence on record, the learned Judicial Magistrate First Class came to the conclusion that respondent No. 1 had failed and neglected to maintain the petitioner. He held that respondent No. 1 was a man of sufficient means and that petitioner was unable to maintain herself. He directed respondent No. 1 to pay to the petitioner Rs. 200/- per month as maintenance from the date of filing of the application. He directed him to pay Rs. 100/- as cost of the proceedings.

6. Being aggrieved by the said judgment and order, respondent No. 1 preferred a revision application in the Court of III Additional Sessions Judge at Kolhapur being Criminal Revision Application No. 137/1990. The learned Sessions Judge, by his judgment and order dated 16.10.1991, allowed the revision and dismissed the application for maintenance filed by the petitioner. It is the said judgment and order dated 16.10.1991, which is under challenge before me.

7. I have heard at some length Mr. M.J. Patil, learned Counsel appearing for the petitioner, Mr. M.A. Patil, learned Counsel appearing for respondent No. 1 and Mr. D.S. Mhaispurkar, learned A.P.P. appearing for the State.

8. Before I deal with the submissions advanced by the learned Counsel appearing for both sides, it is necessary to give some relevant dates. On 7.9.1985 the petitioner had filed a petition being Hindu Marriage/Petition No. HMP-114/85 for restitution of conjugal rights, which is pending in the Court of Civil Judge, Senior Division, Kolhapur. According to respondent No. 1 the notice in the said petition has not been served on him. The case of the petitioner is that respondent No. 1 is avoiding to accept it.

9. In November, 87 respondent No. 1 filed M.J. Petition No. 1039 of 1987 in the City Civil Court at Bombay for divorce on the ground of desertion. It is the case of respondent No. 1 that the said petition came to be filed on 9.10.1987. Admittedly, ex parte decree of divorce on the ground of desertion was passed by the City Civil Court on 11.7.1988. Respondent No. 1 got remarried on 5.12.1988. The petitioner challenged the said ex parte divorce decree filing First Appeal No. 107 of 1990 in this Court on 11.8.1989. Since the said appeal was out of limitation, Civil Application No. 3808/1989 was filed for condonation of delay Civil Application No. 3809/1989 was filed for interim stay. On 23.8.1989 this Court issued rule on Civil Application No. 3808/1989. On the same day rule was issued on Civil Application No. 3809/89 and an order of interim stay of the ex parte decree dated 7.7.1988 came to be passed. Notice of Civil Application No. 3808/89 condonation of delay was not served. It appears that while issuing rule on condonation of delay Application No. 3808/89, this Court had directed that the parties should be examined before condoning the delay. On 6.12.1989 Justice Kolse Patil condoned the delay. However, as directed earlier, by order dated 23.8.1989 the parties were not examined. Therefore, L.P.A. No. 69/1990 was

filed by respondent No. 1 against the order dated 6.12.1989 condoning delay. The Letters Patent Appeal No. 69/1990 was admitted on 24.4.1990. However, there was no interim order passed pursuant to the admission of L.P.A. By order dated 11.10.1990 the, L.P.A. was disposed of. The admission of First Appeal No. 107 of 1990 was set aside and it was remanded for fresh hearing after recording the evidence on the aspect of condonation of delay. Accordingly, the matter was remanded. Evidence was led. Thereupon delay was condoned and appeal was admitted on 5th July, 1991. It may be necessary to note here that, while admitting the appeal on 5th July, 1991, this Court did not stay the ex parte divorce decree dated 11.7.1988.

10. I may now turn to the merits of the case. The learned Magistrate, while passing the order of maintenance, came to the conclusion that the case made out by respondent No. 1 that the petitioner was living an adulterous life is not proved. He observed that the decree of divorce was obtained only on the ground of desertion. The allegations of adultery were, therefore, baseless. He came to a conclusion that since respondent No. 1 had not produced any evidence in connection with the income of the petitioner it is proved that the petitioner is unable to maintain herself. He noted that respondent No. 1 had married second time. He came to the conclusion that respondent No. 1 was a man of sufficient means and he had failed and neglected to maintain the petitioner. In this view of the matter, he directed respondent No. 1 to pay Rs. 200/- per month to the petitioner. In revision, the learned Addl. Sessions Judge reversed this order. He was impressed by the fact that the marriage between the petitioner and respondent No. 1 was dissolved by a decree of divorce. The decree of divorce was passed on the ground of desertion. According to him, though appeal was filed by the petitioner/the High Court had not stayed the decree of divorce and, therefore, the decree was binding on both the parties. He observed that the finding of the Civil Court is binding on the Magistrate by virtue of Sub-section (2) of Section 127 of the Code. He came to the conclusion after assessment of the " evidence on record that the petitioner had failed to prove that respondent No. 1 had refused and neglected to maintain her. He, therefore, allowed the revision and set aside the order of maintenance passed by the learned Magistrate.

11. Mr. Patil, learned Counsel for the petitioner argued that the impugned judgment and order is perverse. He contended that though the High Court had not stayed the decree of divorce, it is necessary to bear in mind that the decree of divorce is ex parte and that an appeal preferred there from is pending in the High Court. Therefore, the decree of divorce has not assumed finality. The matter is subjudice in the High Court. The High Court has still to adjudicate upon its validity. He also contended that the evidence of the petitioner and her mother clearly indicates that respondent No. 1 had failed and neglected to maintain the petitioner and, therefore, this Court should set aside the impugned order and restore the order of maintenance.

12. As against this, Mr. M.A. Patil, learned Counsel appearing for respondent No.

1 has contended that the impugned order does not deserve any interference as it is well-reasoned order. Drawing my attention to Section 127(2) of the Code he argued that under the said provision, it is open to a Magistrate to cancel an order made u/s 125 of the Code if it appears to him that, in consequence of any decision of a competent Civil Court, it needs to be cancelled. In the instant case, since the Civil Court has dissolved the marriage on the ground of desertion by the petitioner, there is no question of refusal to maintain the petitioner by respondent No. 1. He contended that in any case no such case was made out by the petitioner. The learned Sessions Judge was, therefore, right in setting aside the order of maintenance.

13. In my opinion, the learned Sessions Judge has fallen into a serious error in setting aside the order of maintenance. His appraisal of the evidence is perverse and hence I propose to reassess the evidence. Respondent No. 1 has stated that, his father was in service at Mahim Police Station. After marriage he was residing at Nandre. Then he started residing with the petitioner in Mahim. The behaviour of the petitioner was not satisfactory. She told his sister that her marriage was performed against her will and that she was in love with some other person. He had come to know that she had love affair with one Ashok Jadhav. The petitioner's mother came to Nandre and took away the petitioner against the will of his mother. He has stated that Laxmanrao Nandrekar was a mediator in their marriage and that he had informed Laxmanrao Nandrekar that the behaviour of the petitioner was not satisfactory and that there was love affair between the petitioner and Ashok Jadhav. On 18.12.1978, there was a meeting at Nandre where Balifadi, Chandrakant Ingle and Nandrekar were present. The petitioner executed a document in his favour. He was further stated that after 18.12.1978 he had no sexual intercourse with the petitioner and still she conceived. He had got the petitioner examined by a doctor. On 28.2.1979 the petitioner left his house in the morning. He informed her mother about this and filed a missing complaint at Mahim Police Station on 28.2.1979. He has produced a copy of the said complaint which is at Exh. 27 and a chit which was found below the pillow of the petitioner which is at Exh. 39, He also stated that he published an advertisement in the daily Navakal in its issue of 2.3.1979 about the fact that the petitioner was missing. He searched for her at Ichalkaranji. He saw her at the police station and came to know that she was staying with police prosecutor Shri Khare. He has also produced Exh. 62 and Exh. 63 which, according to him, reflect the bad character of the petitioner and her mother. He denied that he had ill-treated the petitioner. He has also given details about the petitioner for divorce filed by him in the Bombay City Civil Court. In the cross examination, he states that his second marriage with one Hemlata took place on 5.12.1988. Significantly in his written statement, respondent No. 1 has not stated that the petitioner had illicit relation with one Ashok Jadhav. He has also not stated that the petitioner conceived even though he had no sexual intercourse with her. Further fact about respondent No. 1 taking the petitioner for medical examination is also not stated in the written statement. In my opinion, therefore, the evidence of respondent

No. 1 does not inspire confidence. In order to tarnish petitioner's image, he has stated that the petitioner was having love affair with one Ashok Jadhav. He has gone on to say that she conceived even though he did not have sexual intercourse with her. However, he has not been able to establish either in his evidence or by way of leading any other evidence that in fact, the petitioner had illicit relation with Ashok Jadhav. The version of the petitioner is that she had conceived. But respondent No. 1 and his family asked her to abort the child. I find no reason to disbelieve the petitioner on this aspect. The conduct of respondent No. 1 in levelling serious allegations against the petitioner particularly, about her character, which he has not been able to sustain by leading any evidence is, in my opinion, deplorable. It suggests that respondent No. 1 is some how trying to prove that the petitioner is a woman of loose character and that, she had deserted him.

14. It is the case of respondent No. 1 that the petitioner left his house on 28.2.1979 and on that day itself he filed a complaint at the Mahim Police Station. Filing of the complaint on 28.2.1979 itself creates little doubt about the bona fides of respondent No. 1. Normally, respondent No. 1 ought to have made some efforts to trace the petitioner. On that very day he went to the police station presuming that she had left him for good. In the facts of the case this conduct creates doubts about his bona fides. In the normal course, respondent No. 1 was expected to make some enquiries in the neighbourhood or to the relatives of the petitioner. The fact that he does not do this discredits him. There is no evidence to mat effect. Respondent No. 1 lodged a complaint with Mahim Police Station where respondent No. I's father was attached as a Jamadar. Therefore, this circumstance, in my opinion, will not by itself support respondent No. I's case.

15. Respondent No. 1 has also cast aspersions on the character of the petitioner because the petitioner went and stayed with Advocate Mr. Khare, who is a retired police prosecutor. The petitioner has stated in her evidence that she was harassed in the house of respondent No. 1. Respondent No. 1 and his family made her abort her child. She was driven out of the house. Due to shock she was not in a proper mental condition and, therefore, she resided in the house of Advocate Khare, Merely because the petitioner went and stayed with Advocate Khare, it cannot be said that she is ah immoral woman. There is no reason to disbelieve the petitioner when she says that she had to go and stay with Advocate Khare to escape from the clutches of people who were sent by respondent No. 1 to beat her. Advocate Khare is a retired police prosecutor and obviously a senior person. Absolutely nothing has been brought on record to suggest that Advocate Khare has a reputation of being an indecent and a bad human being.

16. Respondent No. 1 has produced in the Court a chit, which was found below the pillow of the petitioner. A copy of this chit was handed over to me by the learned Counsel for respondent No. 1. This chit is dated 28.2.1979. It appears from a bare reading of this chit that, the petitioner was all the while being

accused of being a worthless woman who always brought miseries. She apprehended that respondent No. 1 was to divorce her. She has stated that if respondent No. 1 divorces her, she would not stay with her brother or mother, but she will support herself by working somewhere. It also shows that her sister and mother were obviously not prepared to take her back. She has expressed that she had no support. This explains why she did not go to her mother or brother or did not inform them. She had also stated that all accusations made against her are not true and that is known to god. She is not what respondent No. 1 was trying to paint her to be. This letter suggests that, the petitioner was not happy in the matrimonial house. She was not treated well. At least from this letter an inference that she was a characterless woman cannot be drawn. It suggests that there was harassment by her in-laws which forced her to leave the house. The fact that she had filed a petition for restitution of conjugal rights shows that she had a desire to go back to her husband.

17. Respondent No. 1 has relied upon two letters being Exhibits 62 and 63. Copy of Exh. 62 is handed over to me by the learned Counsel for respondent No. 1. In this letter, there is some allegation that the petitioner was having an affair with one Ashok Jadhav. There are similar allegations about the mother of the petitioner. However, this letter is unsigned. The learned Magistrate has rightly not placed any reliance on the said letters. It is not known as to who signed this letter. The author of this letter has gone to the extent of accusing the mother of the petitioner as being a woman of loose character. Such a letter certainly cannot be relied upon to come to a conclusion that the petitioner and her mother were leading an indecent life. It appears that, even letter Exh. 63 is an unsigned letter. In my opinion, no reliance can be placed on Exh. 63 also. In the writing dated 18.12.1978 taken by respondent No. 1 from the petitioner's brother Chandrakant, the brother of the petitioner has tendered unconditional apology for the alleged dissatisfactory behaviour of the petitioner in her matrimonial home. This letter, however, does not speak of the petitioner being a woman of bad character. It only indicates that the petitioner has not carrying out her duties in the matrimonial house properly. Chandrakant has stated that in future the petitioner would behave properly and in case she does not behave properly, the responsibility would lie squarely on his shoulders. It is witnessed by one Nandrekar and one Balifadi. It is quite possible that the brother of the petitioner in order to save the marriage of petitioner could have given such a writing under pressure. In the facts of this case, I am not inclined to give much significance to this letter.

18. Respondent No. 1 has not examined any other witness in support of his case. As against this, the petitioner has examined her mother and Balifadi in support of her evidence. Indubai, the mother of petitioner has stated that respondent No. 1, his mother and sister were ill-treating the petitioner. They were demanding cash and some articles from them. She was unable to provide the said articles. They used to beat her daughter. She came to know that her daughter was missing from the house from witness Balifadi. She then went to Bombay alongwith him

and then she filed an application in Mahim Police Station. When she enquired with respondent No. 1, respondent No. 1 stated that he did not know anything about the petitioner. She had filed a complaint to the Commissioner of Police also. She has further stated that she and Balifadi did make efforts to trace the petitioner. She has also stated that she made efforts to settle the dispute between the petitioner and respondent No. 1, but respondent No. 1 refused to accept the petitioner. The evidence of Indubai indicates that the petitioner was not treated well in the house of respondent No. 1. Nothing has been brought on record in the cross examination of this witness to discredit her testimony. The petitioner has also examined Balifadi, who was a mediator in the marriage of petitioner and respondent No. 1. He has stated that he and Nandrekar made efforts to bring about settlement between the petitioner and respondent No. 1. But they were not successful. He has stated that the mental condition of the petitioner was not good when she was in the house of Advocate Khare. She stayed with Advocate Khare due to affection which she had for Khare's family. He has also stated that when he went to the office of respondent No. 1 along with the petitioner, respondent No. 1 avoided to take the petitioner with him.

19. In her evidence, the petitioner has narrated the ill-treatment meted out to her. She has given reason why she went to Advocate Khare. She has stated about the efforts made by her and her family to bring about a compromise. According to her, respondent No. 1 did not accept her back. The petitioner's evidence inspires confidence and I have no hesitation in accepting it. It is supported by the evidence of her mother and Balifadi. In my opinion, therefore, the learned Sessions Judge was not right in setting aside the order of maintenance. As regards the aspect of capacity of respondent No. 1, the reasoning of the Trial Court is unassailable and to my mind, the amount of maintenance is also reasonable.

20. The learned Counsel for respondent No. 1 emphasized that a wife, who without sufficient reason refuses to live with her husband is not entitled to maintenance in view of Sub-sections (4) and (5) of Section 125 of the Code. My attention was also drawn to Section 127 which makes provision for alteration in allowance. It says that :

"(1) On proof of a change in the circumstances of any person receiving maintenance u/s 125 a monthly allowance or ordered under the same section to pay a monthly allowance to wife, child, father or mother, as the case may be, the Magistrate may make such alterations in the allowance as he thinks fit."

Sub-section (2) says that :

"(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made u/s 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly."

Relying on the ex parte divorce decree, the learned Counsel urged that since the competent Civil Court has now dissolved the marriage by decree of divorce and

that too on account of desertion by the wife, the petitioner will not be entitled to maintenance. Whether or not a wife would be entitled to maintenance, after a decree of divorce passed by a competent Civil Court on the ground of desertion by her, need not be gone into by this Court in this matter for the simple reason that, an appeal preferred from the said ex parte decree is pending being First Appeal No. 107/1990. Therefore, in my opinion, the decree of divorce has not assumed finality. It is subjudice in the Court and this Court may even set aside the same. Therefore, assuming that the wife is not entitled to maintenance after decree of divorce on the ground of desertion by her, in the facts of the present case, she cannot be denied maintenance on that ground. As per Explanation (b) to Section 125 of the Code a "wife" means a person who has been divorced by or has obtained a divorce from her husband and has not remarried. In the facts of this case, I see no difficulty in granting maintenance to her.

21. My attention is drawn to the ruling of the Calcutta High Court in *Ranjit Kumar Pandey Vs. Sm. Swaha Rani Pandey*, . In that case, an order of maintenance was passed u/s 125 of the Code in favour of wife. Thereafter, the husband-petitioner obtained a decree from a competent Civil Court u/s 13 of the Hindu Marriage Act dissolving marriage on the ground of desertion by wife. The husband moved an application u/s 127(2) of the Code for cancellation of maintenance order. Rejecting the application, the Calcutta High Court held that the word decision in Section 127(2) means the determination of a question of controversy and not the reasons or grounds which weigh with the Court in arriving at such decision. The reason or the ground which prompted the Civil Court in the said case to come to the decision for ordering dissolution of marriage was desertion by the wife. The desertion, therefore, was not the decision itself, but reasons for such decision. The application, therefore, could not be allowed. The Court further held that u/s 41 of the Evidence Act, the judgment and decree passed by the Civil Court is conclusive proof of the fact that the opposite party has been divested of her legal status of wife, but is not a conclusive proof of the reasons for which she has been so divested. In those circumstances, the fact of desertion was required to be proved independently in the application for cancellation of maintenance. In the absence of such proof, the application could not be allowed. Therefore, in case of changed circumstances, an application will have to be preferred u/s 127 of the Code for cancellation of the maintenance granted in favour of the wife. The fact of desertion will have to be proved in the said application. In any case, the evidence on record in the present case establishes that respondent No. 1 has failed and neglected to maintain the petitioner and she had to leave the house on account of ill-treatment. Decree of divorce being subjudice in this Court, that will put no fetters on the Criminal Court preventing it from passing an order of maintenance.

22. The learned Counsel also relied upon a judgment of this Court in *Shri Satyawar Laxman Jagtap v. Smt. Vimal Satyawar Jagtap and Ors.* 1999 All MR (Cri.) 1781. In the facts before the High Court, a wife had taken out execution proceedings in respect of the maintenance order passed in her favour. During

pendency of the maintenance application, the husband filed petition for divorce. Ex parte decree of divorce was passed on the ground of cruelty and desertion. It was held that the husband will not be liable for future maintenance to wife as the decree of divorce was passed on the ground of cruelty and desertion. Since in the case on hand, in my opinion, the decree of divorce has not assumed finality, the ratio of this Court's decision in Satyawan Laxman Jagtap's case (supra), will not be applicable to it. In the view that I have taken, the impugned judgment and order will have to be, therefore, set aside.

24. In the result, the following order is passed :

(i) The impugned judgment and order dated 16.10.1991 passed by the III Additional Sessions Judge, Kolhapur, in Criminal Revision Application No. 137/1990 is quashed and set aside.

(ii) the judgment and order dated 21.2.1990 passed by the Divisional Magistrate, First Class, Ichalkaranji in Criminal Application No. 123/1998 is confirmed.

(iii) Respondent No. 1 is directed to pay Rs. 200/- per month to the petitioner as maintenance allowance from the date of filing of the application till date and also in future.

(iv) First Appeal No. 107/1990 which was tagged alongwith this writ petition is directed to be placed before the regular Court.

(v) To avoid destruction of record in the matters pending in this Court as has happened in the present case following directions are issued :

(1) In the criminal matters wherein the judgment and order passed in exercise of revisional or appellate jurisdiction by the Sessions Judge, is challenged in the High Court in an appropriate proceedings and when Rule or Stay is issued, even though such Stay is restricted to the judgment of the Sessions Court, the office should ensure that the copy of the Stay/Writ is also sent to the Trial Court whose judgment was impugned before the Sessions Judge.

(2) When any Writ, Revision or Application is filed in the High Court, impugning the judgment or order passed by the Sessions Court and when such judgment or order was delivered by the Sessions Judge in exercise of his appellate or revisional jurisdiction, the office of the Sessions Court should ensure that copy of the Writ or Stay received from the High Court, in such matter, is also endorsed to the Trial Court, with clear instructions that the record in the matter should be preserved and in no circumstance it be destroyed, although, its period of preservation is over till disposal of the proceedings in the High Court.

(vi) The petition is disposed of in the aforestated terms.