

(2015) 02 BOM CK 0243

In the Bombay High Court

Case No : Criminal Writ Petition No. 417 of 2013

State of Maharashtra

APPELLANT

Vs

Devilal and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Bombay Prohibition Act, 1949 — Section 108, 66(1)(B), 83, 86
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 258

Citation : (2015) ALLMR(Cri) 1691

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : A.K. Bangadkar, A.P.P., for the Appellant; Subodh Dharmadhikari, Sr. Counsel, U.B. Dable, Rohan K. Joshi, N.S. Deshpande and A.B. Moon, Advs, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.

1. Heard. Rule, returnable forthwith. Heard finally by consent. By this petition, the State has challenged legality, correctness and propriety of the discretion exercised by learned Additional Sessions Judge. Nagpur in passing order dated 21/3/2013, thereby rejecting the application filed by the State seeking condonation of delay that had occurred in preferring revision application challenging the order of closure of proceedings under Section 258 of the Criminal Procedure Code passed on 14/12/2010 by the Chief Judicial Magistrate. Nagpur.

2. The State had filed a final report on 10/7/1999 against the respondents on the accusation that the respondents were indulging in illegal activity of manufacturing of country liquor in the premises of Shiv Shakti Fabricators, WIII, M.I.D.C., Hingna, Nagpur, thereby charge sheeting them for offences punishable under Sections 65B, 65D, 65E, 65F, 66(1)(B), 83, 86, 108 of the Bombay Prohibition Act. According to the State, in spite of several summons and warrants

issued to the respondents, the respondents did not attend the trial of the case against them and also rendered them untraceable. Therefore, learned Chief Judicial Magistrate on 14/10/2010 passed an order stopping further proceeding under Section 258 Cr.P.C. Since this order was sought to be reviewed by the State, the State filed an application for review of the order before the learned Chief Judicial Magistrate on 13/5/2011 and that came to be rejected on 14/12/2011 and thereafter at the behest of Law and Judiciary Department, Mumbai, the State preferred revision application with an application for condonation of delay. The application for condonation of delay was registered as Miscellaneous Criminal Application No. 714 of 2012 and after hearing both the sides it was rejected by the learned Additional Sessions Judge on 21/3/2013 on the ground that no sufficient cause had been shown by the State so as to enable the Court to exercise its discretion in favour of the State.

3. According to learned A.P.P. for the State, the allegations against the respondents are of very serious nature and has larger ramifications on the interest of the public. Learned Chief Judicial Magistrate did not understand the efforts taken by the State in procuring the attendance of the respondents before the Court in their proper perspective and therefore he submits that the learned Additional Sessions Judge has even observed so having regard to the severity of the punishment prescribed for the alleged offences. The learned Chief Judicial Magistrate apparently ought not to have treated the proceedings as summary and ought not to have exercised his power under Section 258 Cr.P.C. He submits that even then the learned Additional Sessions Judge found that no sufficient cause has been shown in the matter. According to him, if no interference is made in this case, it will cause great loss to the society and will amount to perpetrators of the crime going free without being put on trial.

4. Learned Senior Counsel for the respondents submits that the order impugned herein is discretionary in nature and has not been shown by the State as to how the order is perverse or arbitrary or against the settled principles of law and, therefore, no interference is called for.

5. Upon perusal of the order, I find myself in complete agreement with the argument advanced by learned Senior Counsel for the respondents when he submits that the impugned order cannot be said to be perverse or arbitrary or against the settled principles of law.

6. In the instant case, when the proceedings were stopped under Section 258 Cr.P.C. On 14/12/2011, it was the duty of the concerned prosecutor to take immediate steps for challenging the order which was considered by the State as absolutely against the well settled principles of law. Yet, the prosecutor did not take any steps and this is evident from the fact that the application for obtaining a certified copy itself was moved on 03/3/2011. No explanation has been given as to why so much of delay occurred in making the application for issuance of certified copy of order dated 14/12/2010. When it was asked of the learned A.P.P. by this Court as to whether any action was taken or had been proposed to be

taken against the concerned prosecutor for not obtaining the certified copy of order dated 14/12/2010 within a reasonable period of time after its passing, learned A.P.P. informed the Court that as per the record available with him, so far, no steps in this direction have been taken. This only shows that what the State is canvassing before the Court is not really meant by it. On one hand the State says that offences are of very serious nature and the approach adopted by the learned Chief Judicial Magistrate is illegal, the State, on the other, takes the matter without any seriousness of any kind. Firstly, it does not promptly apply for issuance of certified copy. When the review application is rejected, secondly, the State takes its own time in forming an opinion about challenging of the order by filing a revision application before the Sessions Court. Thirdly and lastly, the State also does not think of taking any action against the concerned prosecutor who has been seen in this case as having not acted promptly.

7. It is true, for lapse of it's officers, State should not be made to suffer. But, for those who are not part of the Government, it is a lapse of the State and therefore, it is equally true that for such inaction and such lapse on the part of the State, the accused or the respondents also cannot be made to suffer. As rightly submitted by the learned senior Counsel, the respondents on the ground of inordinate delay in disposal of trial alone would be entitled to seek their discharge or stopping of proceedings. Having considered so, I find that learned Additional Sessions Judge has not acted in the matter perversely or arbitrarily or against the well settled principles of law. Therefore, no interference in exercise of writ jurisdiction under Article 227 of the Constitution is warranted.

The writ petition is dismissed.

Rule is discharged.