

ORDER BELOW EXH.05.

01. This is an application, filed u/s 399 r/w 401 of the Code of Criminal Procedure for staying further proceeding, pending hearing and final disposal of the Criminal Revision Application.

02. The case of the applicants, in brief is that, they filed application at Exh.88 in RCC No.263/2009, u/s 245 of the Code, for their discharge, from offences p.u.s 18 (a)(i) and 18(a)(vi) of the Drugs and Cosmetics Act, r/w 16 and 34 of p.u.s. 27(d) of the Drugs and Cosmetics Act. Their said application is came to be rejected by the Trial Court, as on 21/07/2018. They challenged the said order by preferring the revision application. They have very fair chances of success in the revision. Meantime, the trial is required to be stayed. Otherwise, they will suffer an irreparable loss.

03. Lastly, they claimed application as prayed, may be allowed.

04. The prosecution by filing say below said application, contested it on the grounds that, the proceeding before the Trial Court, is old one. It may be called and the revision application may be heard expeditiously. So far as stay application is concerned, any just and proper order may be passed and the revision application may be fixed for final hearing.

05. Heard. Perused record. The following points arise for determination and my findings thereon for the reasons recorded thereunder are as follows :-

Points.

Findings.

- | | |
|---|------------------------|
| 01. Whether the applicants prima facie prove that, the order under revision needs to be suspended ? | Partly
Affirmative. |
| 02. What order ? | As per final order. |

REASONS.

Points No.1 & 2 :-

06. In support of the application, neither the applicants nor the opponent/prosecution have produced on record any affidavit.

07. After hearing arguments of both the learned advocates, I have gone through the record. It reveals that, the accused/applicants have been chargesheeted, in RCC No.263/2009, for offences p.u.s. 18 (a)(i) and 18(a)(vi) of the Drugs and Cosmetics Act, r/w 16 and 34 of p.u.s. 27(d) of the Drugs and Cosmetics Act. They filed application at Exh.88 in RCC No.263/2009, u/s 245 of the Code, for their discharge. The said application is came to be rejected by the Trial Court, as on 21/07/2018.

08. Advocate of the accused/applicants by relying on cases of **Mr. S.R.Sakhalkar Vs. The State of Maharashtra and Anr. 2017 ALL MR (Cri) 2774** and **Sunil Bharati Mittal Vs. Central Bureau of Investigation, (2015) 4 Supreme Court Cases 609**, submitted that, if the order of issuance of process is not after application of mind, it cannot be sustainable in law.

09. Advocate of accused/applicants submitted by relying on cases of **State of Maharashtra Vs. R.A. Chandavarkar & Ors 1999 Drugs Cases 94** and **State of Maharashtra Vs. Shri.Vithoba Maruti Ghadge & Anr, 2018 ALL M R.(Cri) 4903**, that in view of section 21 of

Drugs and Cosmetics Act, 1940, there is mandate that, the appropriate Government is to be appointed and his area assigned is to be notified and published in official gazette.

10. On the basis of aforesaid legal position, advocate of accused/applicants submitted that, the Trial Court has not taken into consideration admissions of P.W.No.1 Shri.Vijaykumar Sagarmal Sanghvi, r/o Mumbai, who was the then, Drug Inspector, who admitted that, he has not produced on record his transfer order, notification Exh.36 is, in respect of, his transfer dated 24/05/2005, it is retrospective, however, there is no mention of retrospective effect and by the said notification, there was no conferment of jurisdiction over Raigad district. According to advocate of accused/applicants, the Trial Court after observing that, their contentions will be taken into consideration at the time of decision and the same cannot be taken into consideration at the time of framing of the charge. According to him, it is an error apparent on the face of record.

11. DGP submitted that, the trial before the Trial Court is of very old proceeding. The same required to be called and the revision application needs to be heard expeditiously. So far as, stay is concerned, he submitted for passing appropriate orders.

12. On the background of aforesaid factual and legal position, I come to the conclusion that, the accused/applicants prima facie succeeded in proving that, the impugned order under revision needs to be suspended/stayed until further orders or till the decision of the revision application, which is earlier. Accordingly, point No.1 answered as “partly affirmative”.

Point No.2 :-

13. As per reasonings and finding recorded in Point No.1,
I pass the following order :-

ORDER.

01. Application at Exh.05 is hereby partly allowed, as follows :-
02. The execution & operation of impugned order dated 21/07/2018, on the application at Exh.88 in RCC No.263/2009, passed by the Trial Court, is suspended/stayed, until further orders or till the decision of the Revision Application which is earlier.
03. The hearing of the Revision Application is expedited. The parties are directed to co-operate and in case of any delay, it is made it clear that, further order for vacating aforesaid suspension/stay order will be passed.
04. Inform the Trial Court, accordingly.

Alibag,
Date :- 16/02/2019.

(R.G.Malashetti)
Addl.Sessions Judge-3, Raigad-Alibag.