



ORDER BELOW THE APPLICATION (EXHIBIT 11)
IN ATRO. SPECIAL CASE NO. 41/2022
(STATE VS. PRAJAKTA)
(PASSED ON : 29/01/2024)

Nature of the Application.

1. This is an application filed by the accused to set-aside no say order passed against her.

Contents in the Application.

2. The accused has contended that as copy of this application was not received within time, she could not remain present in the Court and no say order is passed against her. Therefore, in the interest of justice it is required to be set-aside.

3. On these grounds the accused has prayed to grant the application.

Contents in the Say of the Prosecution.

4. The prosecution has filed say and strongly objected the application.

5. The prosecution has contended that no sufficient reason is shown to grant the application.

6. On these grounds the prosecution has prayed to reject the application.

The Argument.

7. I has heard advocate for the accused and Additional Public Prosecutor for the prosecution assisted by the original complainant, at length.

8. They argued in consonance with their contention in the application and say. I will deal with those at the time of discussing the points taken for consideration.

Points and Findings.

9. Upon hearing, the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Can the no say order passed against accused be set-aside, as prayed for ?	Yes.
2)	What order ?	Application granted. As per final order.

Reasons as to Point Nos. 1 and 2.

10. The accused though served failed to appear. Hence, the application proceeded ex-parte and without say against the accused.

11. The accused has contended that it is necessary to set aside no say order passed against her.

12. The accused has contended that due to non availability of the copy, it was not possible for her to appear and ex-parte and no say order is passed.

13. It is well settled principle in law that too technical or pedantic approach in cases of permitting any party to file written statement even at late stage is not called for. The Court has to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having his determined on merits unless he has, by gross negligence, deliberate inaction, or something akin to misconduct, dis-entitled himself from

seeking the indulgence of the Court.

14. In my view, considering the nature of the case it is necessary in the interest of justice to set-aside *ex parte* order passed against the accused.

15. Further, if the accused is allowed to appear and file *say*, the matter can be decided on merits and it will help to avoid multiplicity of proceeding. Therefore, also *ex parte* and no *say* order passed against the accused is required to be set-aside.

16. According to the accused, it is necessary to appear and to file *say*, in my view, considering the nature of the case and the dispute involved an opportunity is required to be given to the accused to appear and to file *say*, which will help to arrive at proper conclusion.

17. Above all, if the application is allowed no harm or injustice will be caused to the prosecution or the original complainant but it will help to decide the case on merit. Therefore, keeping in mind the legal principles *supra*, I am inclined to give an opportunity to the accused to appear and to file *say*.

18. After giving thoughtful consideration to the facts of the case and the averments made by the accused in this application I am of the considered view that for just decision of this case it is necessary to give an opportunity to the accused to appear and to file *say* in order to find out the truth in the allegations made by the original complainant.

19. I am unable to persuade myself with the arguments advanced on behalf of the prosecution that the application is not tenable, for the simple reason that a litigant ought not to be denied an opportunity of having *lis* determined on merits and my findings, *supra*.

20. In short, relying on the principles discussed, *supra* and the facts and circumstances of the case, I am inclined to grant this

application, and allow the accused to appear and to file say.

21. However, due to inability of the accused to appear and to file say within time prescribed by law the prosecution and original complainant has unnecessarily suffered and for no fault of them, it is the prosecution and original complainant who shall suffer real prejudice therefore, I am of the view that the prosecution and original complainant need to be compensated reasonably by awarding suitable costs. The State i.e. the Taluka Legal Services Authority Pandharpur is also entitled to share the cost amount as directed from time to time by the Hon'ble Supreme Court and the Hon'ble High Court. The cost is quantified at Rs. 150/- (Rs. One Hundred Fifty only) considering the nature of application, delay caused, the overall conduct of the accused and the stage of the case.

22. Accordingly, I answer Point No. 1 in the affirmative and Point No. 2 as application granted as per final order.

23. In the result the following order.

ORDER.

1.	The application (Exhibit 11) seeking setting aside the order of "exparte and no say" passed against the accused is allowed and the "exparte and no say" order is set aside subject to costs of Rs. 150/- (Rs. One Hundred Fifty only) to be deposited in the Court on or before 05/02/2024, failing which the application (Exhibit 11) shall stand rejected, automatically.		
2.	The cost awarded shall be apportioned as herein below :-		
	a)	The original complainant.	Rs. 100/- (Rs. One Hundred only).

b)	The State. (Be credited to the Government account).	Rs. 25/- (Rs. Twenty Five only).
c)	The Taluka Legal Services Authority, Pandharpur.	Rs. 25/- (Rs. Twenty Five only).

(Pronounced in the Open Court).

Sd/-

Dated :- 29/01/2024.

(M. B. Lambe)
Special Judge (Atrocity Act,)
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 29/01/2024
- (d) Order uploaded on : 30/01/2024