

**State of Maharashtra**

**Vs.**

**Dundya Mali & Ors.**

1. This is very old criminal case instituted in the year 1999 for the offence punishable under sections 457 & 380 r/w 34 of IPC. The report of summons and warrants shows that accused is not traceable and there are remote chances that accused will make his presence in near future in present case. This case become stale and ineffective due to lapse of time. Therefore, at the time of search of accused NBW was issued as provided in Section 70 and 82 of the CrPC. Warrant report below **Exh. 17** shows that accused is absconding and not traceable and his either movable or immovable property is found which can be attached to secure presence of accused. Therefore, no fruitful purpose would be served by issuing proclamation against the absconding accused. Therefore, it was demand of time that something has to be done in present case. Therefore, it was decided to record prosecution's evidence under section 299 of the Cr.PC. Accordingly summons was issued to all prosecution witness by passing detail order below Exh. 1 and obtained summons report below **Exh. 18**.

2. The summons report shows that informant and other witnesses are not residing on given address. The persons who are residing at given address do not know whereabouts of the informant and other witnesses. Some witnesses gave incomplete address; therefore, they could not be traced out despite due diligence. Now, it is very difficult to find their present address. The I.O. is transferred or may be retired, thus his present address is not available in police station therefore he could not be served with summons. Therefore, prosecution examined summons serving Constable as PW-1, who reaffirmed the above facts. It shows that even in near future there are remote chances that prosecution witnesses would come to depose their evidence against the accused. Consequently prosecution would not be in position to adduce substantial evidence which would fetch conviction to the accused. Therefore, considering all these facts today by passing detail order below Exh. 1 evidence of prosecution recorded under section 299 of the Cr.PC is closed.

3. Overall there no sufficient evidence to keep this prosecution pending against the absconding accused for years together. Therefore, it would be justifiable to stop proceeding against he absconding accused by discharging him under section 239 of the Code of Criminal Procedure, 1973. Therefore, in the interest of justice I pass the following order.

**:- ORDER :-**

- (1) Accused is discharged for commission of offence punishable under sections 457 & 380 r/w 34 of IPC as provided in section 239 of the Code of Criminal Procedure, 1973.
- (2) Surety and bail bond of accused shall stand cancelled.
- (3) The Muddemal property seized by the investigating officer during investigation, if it is returned to it's true owner then it shall remain with him/her forever after appeal period gets over and if it is not returned to the informant or its true owner, then it shall be auctioned and recovered amount shall be credited to the state government and if seized muddemal is deteriorated in condition then it shall be disposed of as per Rules after appeal period gets over.

Sd/-

**(S. C. Havelikar)**

Jt. CJJD &amp; JMFC, Thane

District :- Thane.

Date :- 07-10-2024

Place :- Thane