

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1618 OF 2011
(@ SLP(Crl.) No. 5678/2011)

HARISH R.BHATTAD & ANR.

...APPELLANTS

VERSUS

STATE OF MAHARASHTRA & ANR.

...RESPONDENTS

WITH
CRIMINAL APPEAL NO. 1619 OF 2011
(@ SLP(Crl.) No. 6132/2011)

O R D E R

Leave granted in each petition.

The order dated 31.1.2011 passed by the learned Single Judge of the High Court of Judicature at Bombay in Criminal Writ Petition No. 1278/2009 and Criminal Writ Petition No. 1298/2009 by which the High Court has refrained itself from exercising its powers vested under Article 226 and 227 of the Constitution of India read with inherent powers under Section 482 of Crl.P.C. to quash the Complaint Case No. 134/PW/09 in M.E.C.R. No. 5 of 2008 pending before learned Additional Chief Metropolitan Magistrate, IVth Class at Girgaon, Mumbai, in view of order dated March 30, 2009 passed by the Bombay High Court in Criminal Application No. 840 of 2009, is the subject matter of challenge in the present appeals.

This Court has heard the learned counsel for the parties.

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The High Court has declined to entertain the petitions on the ground that earlier order dated March 30, 2009 passed in Criminal Application No. 840/2009 permitted the petitioners to file an application for discharge before the learned Magistrate. It may be stated that Criminal Application No. 840 of 2009 was filed essentially challenging order of the learned Chief

Metropolitan Magistrate, IVth Court, Girgaon, Mumbai

directing investigation u/s 156(3) of the Cr.P.C., though there was also a prayer to quash M.E.C.R. No. 5 of 2008 registered by the investigating officer, V.P. Road Police Station. The said application was rejected on the ground that the petitioners have alternative efficacious remedy of praying for discharge u/s 239 Cr.P.C. is available.

Thereafter, two writ petitions were filed for quashing the complaint, which are dismissed in view of order dated 30-3-2009 passed by High Court in Criminal Application No. 840 of 2009.

In Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate and Others (1998) 5 SCC 749 this Court has held as under :-

"No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceedings quashed against him

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when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial."

Further in Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and Others (1975) 3 SCC 706 what is held by this Court is that the High Court has power to entertain the application u/s 482 Cr.P.C. again in changed circumstances. The petitioners have pleaded changed circumstances in the two writ petitions. Therefore, the petitions should have been considered on merits instead of dismissing them on the basis of order dated 30-3-2009 passed in Criminal Application No. 840 of 2009.

On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served if the matters are remitted to the High Court for deciding the same on merits after hearing the

parties.

For the foregoing reasons, both the appeals succeed. Impugned orders dated 31.1.2011 passed in Criminal Writ Petition No. 1278/2009 and Criminal Writ Petition No. 1298/2009 are hereby set aside. The matters are remanded to the High Court for disposing of the same on merits. Both the petitions are revived with their original numbers. We make it clear that this Court has not observed anything on the merits of the case.

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It will be open to the appellants to apply to the High Court for the stay of the proceedings pending before the learned Magistrate and if such a prayer is made, the same shall be decided on merits without being influenced by the impugned orders.

Subject to the above mentioned observations, the appeals stand disposed of.

.....J.
(J.M. PANCHAL)

.....J.
(H.L. GOKHALE)

NEW DELHI;
DATED AUGUST 19, 2011

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ITEM NO.10 + 46 COURT NO.11 SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).5678/2011

(From the judgement and order dated 31/01/2011 in WP No.1278/2009 of The HIGH COURT OF BOMBAY)

HARISH R.BHATTAD & ANR. Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ANR. Respondent(s)

(With appln(s) for ex-Parte stay,exemption from filing c/c of the impugned Judgment,exemption from filing O.T. and office report)

with
SLP(Crl) No. 6132/2011
(With appln(s) for ex-Parte stay,exemption from filing c/c of the

impugned Judgment,exemption from filing O.T. and office report)

Date: 19/08/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.M. PANCHAL
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Altaf Ahmad, Sr Adv.
Mr. P.N. Gupta,Adv.
Mr. H. Devarajan, Adv.
Mr. Varun Chaudhary, Adv.

For Respondent(s) Mr. Aman Vachher, Adv.
Mr. L.K. Sharma, Adv.
Mr. A.Dubey, Adv.
Mr. P.N. Puri,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the
signed order.

(Sonia)
Sr. P. A.
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(Sneh Bala Mehra)
Court Master

(Signed order is placed on the file).