

2024:BHC-AS:45649-DB



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION (ST) NO. 18978 OF 2024

Manorama Dilip Khedkar ...Petitioner
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Narayan G. Rokade a/w Mr. Vijay Jagtap, Mr. Udaysinh Deshmukh, Mr. Vikrant Kadam & Mr. Harishchandra Jadhav, for the Petitioner.

Mr. K.V. Saste, Addl.P.P for the Respondent-State.

Mr. E.B.Patil, PSI attached to Pune Rural, present.

CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
DATE : 27th NOVEMBER, 2024

ORAL ORDER (PER REVATI MOHITE DERE, J.) :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

3. By this petition, the petitioner seeks quashing and setting aside of the impugned order dated 2nd August, 2024, passed by the Respondent No.2 – Commissioner of Police, Pune City, Pune.

3. The principle grievance of the learned Counsel for the petitioner is that the petitioner was not heard nor any notice was served on the petitioner before the impugned order dated 2nd August, 2024 was passed. In this view of the matter, learned Counsel for the petitioner requests that the impugned order dated 2nd August, 2024 be quashed and set aside and the matter be remitted back to the respondent No.2 – Commissioner of Police, Pune City, Pune, for a fresh decision, on merits.

4. The matter was kept today to enable the learned Addl.PP to show us that the notice was, infact, served on the petitioner.

5. Mr. Saste, learned Addl.PP, today, orally informs us that

the notice was pasted on the door of the petitioner's house. Learned Addl.PP is unable to show us the panchanama to that effect that the notice was pasted on the door of the petitioner's house.

6. Perused the papers. It appears that the petitioner was in custody and was lodged in the Yerwada Jail in connection with C.R.No. 302 of 2024 registered with the Paud Police Station, Pune Rural, from 18th June, 2024 to 2nd August, 2024. The impugned order is dated 2nd August, 2024. From the said impugned order, there is nothing to indicate that the petitioner was served with the notice as is mandatory in law. The impugned order reflects that since the notice period of 10 days had lapsed and as none had appeared, it was presumed that the petitioner had nothing to say on her behalf.

7. Considering that there is nothing to show that the notice was duly served on the petitioner as mandated in law, the impugned order cannot be sustained. Even otherwise, the petitioner was in custody during the period from 18th June, 2024 to 2nd August, 2024 and could not have appeared before the authority.

8. Considering what is stated aforesaid, the impugned order dated 2nd August, 2024 passed by the respondent No.2 – Commissioner of Police, Pune City, Pune, is quashed and set aside and the matter is remitted back for fresh consideration to the respondent No.2.

9. Needless to state, that the respondent No.2 to issue a fresh notice to the petitioner to appear before him and thereafter, take an appropriate decision on the petitioner's application, in accordance with law.

10. We make it clear that we have not gone into the merits of the case, and as such, all contentions of all parties are kept open.

11. The respondent No.2 – Commissioner of Police, Pune City, Pune, to decide the application preferred by the petitioner, on its own merits, uninfluenced by its earlier order dated 2nd August, 2024.

12. Rule is made absolute on the aforesaid terms. The petition is accordingly allowed and is disposed of.

13. All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.