

MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE  
CRIMINAL MISC. APPLICATION NO. 329 OF 2007  
IN  
MISC. APPLICATION NO. 324 OF 2007  
IN  
WRIT PETITION NO. 460 OF 2007

BHAVARLAL BHIKAMCHAND JAIN .. PETITIONER

Vs.

STATE OF MAHARASHTRA & ORS. .. RESPONDENTS

Mr. Y. S. Shinde, APP

Mr. Vinod Mahadik for B.M.C.

CORAM: SMT. RANJANA DESAI &  
D. B. BHOSALE, JJ.  
DATED:-30/6/2008

**P.C.:-**

. On 13/4/07 by a reasoned order, we dismissed the petition. Today our attention was drawn to the fact that one of us (D.B. Bhosale, J.) had appeared for the petitioner as a counsel in Writ Petition No. 713 of 2000. That petition was disposed of as withdrawn on 18/4/2000. The petitioner should have really brought this fact to our notice, when we heard the petition (Writ

Petition No. 460 of 2007). In view of this, we will have to recall our order dated 13/4/07. But there is yet another reason why our order needs to be recalled.

2. The petitioner has informed us that a wrong statement was made before us that he had preferred a Special Leave Petition against the order of this court dismissing the appeal preferred by him against the order dismissing his B.C.C. Suit No. 5694 of 1994 filed against the Mumbai Municipal Corporation ("M.M.C." for short). There does not appear to be any dispute about the fact that this statement is not correct. Undoubtedly this fact weighed with us when we dismissed the petition.

3. From our order it is clear that this statement was made by the APP on the basis of instructions given by the Officers of Dindoshi Police Station, Malad. Concerned officers are present in the court. They state that this information was furnished to them through the letter of the Law Officer of the M.M.C. dated 12/4/99. We have seen the said letter. It states that Special Leave Petition filed against order dated 27/4/97 in Criminal Writ Petition No. 436 of 1998 was disposed

of by the Supreme Court. Obviously, therefore, the M.M.C. did not give any incorrect information to the APP.

4. We record our dissatisfaction about the manner in which all parties assisted the court. Writ Petition in which one of us (D. B. Bhosale, J.) had appeared for the petitioner is of the year 2000. The order under review was passed by us on 13/4/07. It was the petitioner's duty to bring this fact to our notice, at the outset. Learned APP should have also been careful while making statement. M.M.C's letter does not reflect the statement made by her in this court. Police Officers also should have been careful while instructing the APP. We hope that in future the parties deal with the court proceedings with a sense of responsibility.

5. Copy of M.M.C's letter dated 12/4/99 and copy of order dated 18/4/2000 in Writ Petition No. 713 of 2000 are taken on record and marked "X" and "Y" respectively.

6. For the reasons stated hereinabove order dated 13/4/07 is recalled. Office is directed to take

steps to place this writ petition before the appropriate court.

7. Review Petition is disposed of in the aforestated terms.

JUDGE.

JUDGE.