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19.apl.222.2026

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 222 OF 2026

State of Maharashtra, Through the Police Station Officer/Senior Police Inspector, Lakadganj Police Station, Nagpur City
 Vs.

Satish s/o Sanjay Ramteke

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. D. V. Chauhan, Public Prosecutor a/b Mr. A. M. Kadukar, APP for the applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/02/2026

1. By this application, the applicant/State is challenging the order passed by the learned Additional Sessions Judge-11, Fast Track Special Court/POCSO Court, Nagpur on 21.01.2026 in Special Case No.262/2018 below Exh. 1.
2. From the order it reflects that the case was posted for recording evidence of prosecution as the case being part heard. It is mentioned in the order that the summons report was filed before the Court which discloses that summons is served through mobile phone to the witnesses. Witnesses namely Gunjal Prabhakar Kharabe and Dnyeshwar Sitaram Munde are absent. Service of summons through mobile phone to the witnesses is not allowed. Therefore, due to non-service of the summons by

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legal mode case is delayed and in that circumstances, the Special Judge has imposed the cost on the concerned Constable.

3. Heard learned Public Prosecutor for the applicant/State, who submitted that in fact the order is passed by ignoring the provisions of law i.e. Section 70 and Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'). He also submitted on the factual aspect so also the order passed by the Special Court is wrong and illegal. He invited my attention towards the summons report and submitted that initially, the summons was served on the witnesses and the date communicated to them on 03.11.2025. Thereafter, the summons was again reissued on 03.11.2025 which was never handed over to the concerned Constable to serve the same. He has also placed reliance on the diary, which is maintained by the concerned Constable regarding the receipt of the summons from the Court.

4. He also placed reliance on the decision of this Court in **Kross Television India Pvt. Ltd., and another Vs. Vikhyat Chitra Production and others** reported in **2017 SCC OnLine Bom 1433**, wherein he submitted that this Court has very nicely considered that what is the purpose of the summons and it is only that the fact is to be brought to the notice of the person who is receiving the said notice

therefore that knowledge is already there. In view of that, the application deserves to be allowed.

5. On hearing the learned Public Prosecutor, I do not feel that the notice is required to be served on the non-applicant.

6. From the impugned order, it reveals that as the summons was served through the mobile phone and therefore, the cost is imposed by the Special Court. Admittedly, there is amended provision in view of Section 70 of BNSS which deals with proof of service in such cases when serving officer not present. The sub-Section (3) specifically states that all summons served through electronic communication under sections 64 to 71 shall be considered as duly served and a copy of such electronic summons shall be attested and kept as a proof of service of summons as well as Section 530 of the BNSS also deals with the aspect of trial and proceedings to be held in electronic mode which reproduced as under:

All trials, inquires and proceedings under this Sanhita, including issuance, service and execution of summons and warrants, examination of complainant and witness, recording of evidence in inquiries and trials, all appellate proceedings or any other proceedings, may be held in electronic mode, by use of electronic communication or use of audio-video electronic means.

7. Thus, after going through this provision it reveals that now the electronic mode is very well accepted by the amendment in BNSS and the purpose which is rightly considered by this Court in the case of **Kross Television India Pvt. Ltd., and another** referred supra wherein it specifically mentioned that the purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. Here in the present case also as the communication was already there as initially the summons was already served and the witnesses were bond over therefore, the communication through the mobile phone by the Constable regarding the information of date is of course not illegal it was only the purpose which required to be seen and now the mobile service by the electronic media is already accepted in view of Section 70 of BNSS. The learned trial Court apparently ignored the said provision and passed an order and unnecessarily imposed the cost on the Constable. On the factual aspect also the order passed by the trial Court is wrong as the record shows that the after 03.11.2025, when the witnesses were bond over again the summons was reissued and the said summons were not handed over to the Constable for service, therefore, the order on the factual aspect is also incorrect.

8. In the above circumstances, the application deserves to be allowed.



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9. The order passed below Exh.1 in Special Case No.262/2018, directing to recover the costs from the concerned Officer/Police Constable, is hereby quashed and set aside.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate