

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.106 OF 2015

Sou. Archana Gopal Tawade	..Applicant
-Versus-	
State of Maharashtra & Ors.	..Respondents

Applicant present in person
Mrs.P.P.Bhosale, APP for State
Mr.Irfan Shaikh for respondent No.2 and 3

CORAM	:	A.R.JOSHI, J.
DATE	:	9 th JUNE 2015

P.C.

1] Heard the applicant in person. Also heard learned Counsel for respondent No.1. This is an application filed under section 407 of Cr.P.C. This is an application, filed by the applicant – original complainant, who had lodged a private complaint against the present respondent No.1 and her husband before the concerned Magistrate's Court Mumbai. The process was issued only against present respondent No.1 i.e. original accused No.1 and that also for the offence punishable under section 420 of IPC.

2] The process was not issued against original accused No.2.

Inspite of this he has been mentioned as respondent No.2 in the present matter, apparently, on the premise that the present applicant – original complainant still is of the view that the original accused No.2 also must be tried and dealt with in accordance with law. Whatever might be such desire of the original complainant/ present applicant, the fact remains that the order of issuance of process against only the respondent No.1 who is original accused No.1 has not been challenged before higher forum. The only grievance of the present applicant/ original complainant is that the concerned Judicial Magistrate who had issued the process had already set her mind and dealt with the matter in that fashion and earlier had not allowed the present applicant – original complainant to represent her case in person. This is apparently the factual position as the applicant had to approach this court on administrative side, asking for relief and according to the present applicant this has infuriated the concerned Judicial Officer and thus, further orders were passed, apparently issuing process only against the accused No.1 and that also for the offences under section 420 of IPC and not for other sections.

3] Earlier application was made under section 408 of Cr.P.C. before the Principal Dist. Judge, Thane. However, the said application was rejected and accordingly disposed of vide order dated 12th December 2014. Thereafter, the present application under section 407 is preferred. No doubt it is the cardinal principal of law that justice is not only to be done but it is seemed to have been done and if any party to the litigation has lost faith in a particular court/ Judicial Officer, then, atleast in order to see that the impartial justice should be done, in certain cases, the matter can be taken before another Judicial Officer, of course, without making any imputations against the earlier Judicial Officer regarding his conduct.

4] In the present case apparently, there were some circumstances, during which, the present applicant was not allowed to represent her case in person and she had to approach to High Court on administrative side for getting appropriate orders by making an application before Hon'ble Chief Justice.

5] Considering the provisions of section 407 of Cr.P.C., without much going into the details as to the cause against the concerned

Judicial Officer, suffice it to say that in the interest of justice the matter can be taken before another court of equal and competent jurisdiction. However, this may not be treated as precedent or acceptance of any of the imputations against the present Judicial Officer, who is holding the case filed by the present applicant. Otherwise also there is nothing that if the matter is taken before another Judicial Officer of equal jurisdiction and competence, then any prejudice would be caused to the present respondent No.1, who has only to face the rigours of private complaint lodged by the present applicant as the process is only against the present respondent No.1.

7] In the result, the present application is allowed simplicitor, without there being any comments and the Principal Dist. Judge Thane is directed to transfer the pending complaint No.972/2013 before another court of equal and competent jurisdiction for disposal in accordance with law.

(A.R.JOSHI, J.)