

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.741 OF 2015

Varashree Narayan

..Petitioner

Versus

State of Maharashtra
and another

..Respondents

....

Ms. Varashree Narayan, Petitioner present in-person.

Mr. Niranjan Mundargi, Advocate for Respondent No.2.

Mr. A.K. Patil, APP, for Respondent No.1 – State.

....

CORAM : M. L. TAHALIYANI, J.

DATE : 22nd APRIL, 2015

P.C.

1. Heard the petitioner appearing in person, learned Advocate Mr. Niranjan Mundargi for respondent No.2 and learned Additional PP. for respondent No.1 – State. Admit. By consent, the Petition is taken up for final disposal.

2. The respondent No.2 is facing the trial for the offence punishable under Section 426 of IPC in the Court of Metropolitan Magistrate, 40th Court, Girgaon, Mumbai on the complaint filed by the petitioner. It appears that the original complaint was for the offences punishable under Sections 406 and 426 of IPC. It further appears that the process was issued only for the offence punishable

under Section 426 of IPC. The plea of respondent No.2 was recorded and the case proceeded further. The evidence of PW-1 (the petitioner) has been completed.

3. The petitioner had moved the learned trial Magistrate to add some charges in view of her evidence recorded before the Magistrate. The learned Magistrate has taken a view that the process was issued for the offence punishable under Section 426 of IPC and that the plea of respondent No.2 was also recorded for the said offence. The learned Magistrate, therefore, has said that the petitioner has travelled beyond the charge framed against the respondent No.2 and, therefore, the evidence given by the petitioner in respect of other offences is irrelevant. In my opinion, this view expressed by the learned Magistrate is erroneous. If this view is to be accepted then all sections pertaining to additions and alterations of charges will have to be deleted. It follows that the learned Magistrate has to consider the application filed by the petitioner on merits and has to decide whether legally speaking and on factual basis the charge can be altered or amended and has to give a finding in that respect.

4. For all these reasons, the order passed by the learned Magistrate below Exhibit-55 in Case No.2692/S/1999 is set aside. The order passed by the Additional Sessions Judge, Greater Mumbai dismissing the Revision Application is also set aside. The learned trial Magistrate is directed to consider the application for alteration of charge on legal issues as well as on factual issues and

decide the same on merits. The application of the petitioner shall be decided within a period of eight days from the next date of hearing of the case, as the case is pending in the Court of Magistrate since last 15 years and further hearing of the case shall be expedited. The case shall be disposed of within a period of three months from the date of the fresh order passed below Exhibit-55.

5. Writ Petition is disposed of accordingly.
6. Learned Magistrate to act upon an authenticated copy of this order.

JUDGE