

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 2721 OF 2015

Ajitkumar Jaykumar Gandhi

.....Petitioner

V/s.

State of Maharashtra and another

....Respondents

Mr. Surel S. Shah for Petitioner

Mr. A. S. Patil APP for the State

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 8, 2015.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of parties.
- 3) Petitioner herein had filed an application under section 245 (2) of Code of Criminal Procedure, 1973 in R.C.C. No. 30 of 1992. Learned Magistrate had posted the matter for recording of evidence before charge. Learned Magistrate has rejected the said application vide order dated 02/11/2012 on the ground that Court has to form a presumptive opinion as existence of factual ingredients constituting an offence as alleged. In such circumstances as evidence of the complainant is yet to be completed, application being prematured, is liable to be rejected.

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4) Being aggrieved of the said order, petitioner herein had filed revision application before Additional Sessions Judge at Malshiras. Learned Additional Sessions Judge, by an order dated 09/03/2015 has dismissed revision application and has directed the Trial Court to proceed with the case and decide it within 6 months from the date of this order. Being aggrieved of the said order, petitioner has filed present writ petition.

5) It is true that learned Trial Court has yet to record the evidence before charge and arrive at a conclusion that a case is made out for framing of charge and therefore, Trial Court has rightly held that application under section 245 (2) of Code of Criminal Procedure, 1973 as preconceived and prematured. Order passed by Trial Court, confirmed by Revisional Court, in fact calls for no interference. Therefore, this Court is of the opinion that learned Trial Court shall proceed with recording of evidence before charge. In the eventuality the learned Magistrate forms an opinion that a case is prima facie made out for framing of charge, he shall defer the matter for 4 weeks after forming an opinion and give an opportunity to the petitioner to take steps in accordance with law.

6) With these observations, petition is disposed of.

- 7) Rule is discharged in the above terms.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.