

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4373 OF 2014

Ashok D. Kulkarni

.. Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. Mahesh Jethmalani, Sr. Counsel a/w Mr. Kamlesh Ghumare
i/b Sonali S. Jadhav for the petitioner

Mr. S.K. Shinde, PP a/w J.P. Yagnik, APP for respondent State

CORAM: RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED: 11th AUGUST, 2015.

P.C.

1. Heard learned Counsel for the respective parties.
2. This petition is filed under Article 226 of the Constitution of India for transfer of investigation to an independent agency like Crime Branch / State CID or EOW. In pursuance of the application filed by the petitioner, the learned Magistrate passed an order dated 20.03.2013 below Exh.1, under Section 156(3) of the Cr.P.C. and thereafter M.E.C.R. No.9 of 2013 was registered

with Oshiwara Police Station, Mumbai.

3. Upon completion of the investigation, the investigating agency submitted “B” summary report dated 21.10.2013. The petitioner filed protest petition and upon hearing the petitioner, learned Metropolitan Magistrate by order dated 15.01.2014, ordered further investigation under Section 156(3) of the Cr.P.C. and directed to complete the same within two months. Since the investigation was not completed within the stipulated time, the petitioner filed an application for transfer of investigation before the learned Magistrate and the learned Magistrate by his order dated 16.06.2014 transferred the investigation of the said M.E.C.R. to the Economic Offence Wing. The accused in the said M.E.C.R. challenged this order by filing Writ Petition No.3692 of 2014. The learned single Judge by his order dated 21.11.2014, set aside the order transferring the investigation to Economic Offence Wing. The petitioner thereafter has approached this Court by filing the present petition.

4. Undisputedly, the Magistrate has ordered further investigation and directed completion of further investigation within a period of two weeks with effect from the date of order i.e. 15.01.2014. By the said order, Mr. Baburao Mukhedkar, PI was directed to carryout further investigation and Owshiwara Police Station were directed to hand over the investigation papers to Mr. Mukhedkar, PI, within a period of two months. The investigation papers were not handed over to PI Mukhedkar and no further investigation was carried out as per order dated 15.01.2014. It appears that the officers are trying to shirk their responsibility by pointing fingers to each other. The petitioner has alleged *mala-fides* against the officers. The casual manner in which the investigating agency have acted, itself is a ground which *prima facie* supports the contention of the petitioner. On the sole ground, we are inclined to transfer the investigation of M.E.C.R. No. 9 of 2013 to Crime Branch, Unit No.9 Mumbai. Ordered accordingly.

5. Mr. Yagnik, learned APP makes a statement that papers of M.E.C.R. No.9 of 2013 are lying with the Court of Metropolitan Magistrate, 65th Court, Andheri, Mumbai. The Senior PI of Oshiwara Police Station shall collect these papers and thereafter shall handover the same to the Crime Branch, Unit 9, Mumbai. The Crime Branch, Unit 9, Mumbai thereafter shall complete the further investigation as expeditiously as possible and submit the report to the concerned Magistrate within a period of 3 months from the date of receipt of the investigation papers.

6. It is expressly made clear that we have not gone into the merits of the case and all rights and contention of the respect parties are left open. The Crime Branch, Unit No.9, Mumbai shall carry further investigation independently on its own merits.

7. Subject to above, the Writ Petition is disposed of.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)