

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

CRI. WRIT PETITION NO. 4716 OF 2014

Anil Hardasmal Kamra @ Mukhi & Ors. ... Petitioners.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. R. D. Suryawanshi, Advocate, for the Petitioners.

Smt. P.P. Bhosale, APP for the State.

Mr. S.K. Gawda, Advocate, for Respondent No.2.

CORAM : M.L.TAHALIYANI, J.

DATE : 06 JANUARY, 2015

P.C. :

1 Heard the learned counsel appearing for the parties.

2 The Petitioners are aggrieved by the judgment and order passed by the learned Ad-hoc & Additional Sessions Judge, Kalyan, thereby setting aside the order of the learned Magistrate passed under section 202 of the Cr.P.C., whereby the police enquiry was ordered by the Magistrate. The Petitioners-accused were the proposed accused in the complaint filed by respondent no. 2 - Smt. Koshibai.

3 Respondent No.2 had prayed for an order under section 156 (3) of the Cr.P.C.. The learned Magistrate instead of granting the prayer for police investigation, took cognizance of the offence and directed that the complaint be placed before him for recording statement of respondent no.2 on oath. Respondent No.2 being aggrieved by the said order moved the Sessions Court. The Sessions Court after hearing the respondent no.2 and the State, directed the Magistrate to send the compliant to police for investigation.

4 The Petitioners are aggrieved by the said order of the learned Sessions Judge. Learned counsel for the Petitioners has submitted that in the first place, the Petitioners were entitled to be heard in the revision petition filed by Respondent No.2. It is submitted that on this ground itself the order passed by the learned Sessions Judge is bad in law. The learned counsel for respondent no.2 has submitted that the FIR has been registered in view of the order passed by the Sessions Court and investigation is in progress. It is submitted that in the peculiar facts of the case, this court may not interfere in the order passed by the Sessions Judge.

5 It is very well settled that the Magistrate on receiving a complaint of a cognizable offence may either refer the complaint to the police without taking cognizance thereof or may take cognizance and enquire into the complaint. He

may also refer the compliant to the police for inquiry under section 202 of the Cr.P.C.. When the Magistrate has exercised his discretion in a judicious manner and passed a reasoned order, in my opinion, there was no reason for the learned Sessions Judge to interfere in the order passed by the learned Magistrate. The reasons given by the Sessions Court, in my view, are not acceptable inasmuch as if some intervention was necessary, the learned Magistrate could have been directed to send the compliant for inquiry by the police under section 202 of the Cr.P.C..

5 For all these reasons, the writ petition is allowed and the order passed by the learned Sessions Judge is set aside. The learned Magistrate shall proceed with the compliant in accordance with the law.

(JUDGE)

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