

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.40 OF 2016

KAUSALYABAI MACHINDRA DALVI

PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

RESPONDENTS

Mr.C.V.Thombre, Advocate for the petitioner.

Mr.S.G.Karlekar, APP for the respondent/State.

Mr.S.J.Salunke, Advocate for respondent Nos. 3 to 6.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/06/2016

PER COURT :

1. The issue raised in this petition is as to whether the report dated 25/11/2015, purportedly submitted by the I.O. to the learned Magistrate u/s 169 of the Cr.P.C., could be termed to be a report u/s 169 or whether it could be a report u/s 173(2) of the Cr.P.C.

2. The petitioner has cited the judgment of the Apex Court in the matter of Gangadhar Janardan Mhatre Vs. State of Maharashtra and others, 2005(1) BCR (Cri.) 180 wherein the Court has considered the right of an informant, to a notice and an opportunity of hearing, if a report u/s 173(2)(i) is forwarded to the Magistrate.

3. Mr.Salunke, learned Advocate appearing on behalf of respondent Nos. 3 to 6 submits that firstly the petitioner can approach the Revisional Court u/s 397 of the Cr.P.C. Secondly, he relies on the judgment of this Court in the matter of Abdul Razak Abdul Gani Dunge Vs. State of Maharashtra and others 2007 All M. R. (cri.) 3084 and in the matter of Mohd. Rafique Abdul Rahman and others Vs. State of Maharashtra, 2013 (1) BCR (Cri) 251 to support his contention that there is no provision u/s 169 of the Cr.P.C. requiring the I.O. to submit any report to the Magistrate. The I.O. has to pass an order u/s 169 releasing the accused from the custody on certain conditions if the I.O. is convinced that there is deficiency in the evidence in relation to an offence investigated. Mr.Salunke, therefore, submits that the contention of the petitioner that she should be heard before the accused are released u/s 169 is unsustainable.

4. Considering the above, Mr.Thombre, learned Advocate appearing on behalf of the petitioner submits that he would assail the impugned order u/s 397 of the Cr.P.C. by withdrawing this petition. This Court may consider the pendency of this petition from 11/01/2016 till this date as a ground available for condonation of delay, if any while exhausting the remedy u/s 397.

5. In the light of the above, this petition is disposed of, as being withdrawn. The petitioner is at liberty to avail of the remedy u/s 397 of the Cr.P.C. The time spent by the petitioner in this Court from 11/01/2016 till the passing of this order shall be a ground for condonation of delay in the event the petitioner prefers the proceedings u/s 397 within 4 (four) weeks. Needless to state, all the contentions and grounds raised by both the sides with regard to the impugned order are kept open for consideration of the Appropriate Forum.

(RAVINDRA V. GHUGE, J.)