

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 560 OF 2005

PRAKASH NILKANTH JOSHI
VERSUS
MADHURI PRKASH JOSHI & OTHERS

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Advocate for Petitioner : Mr D M Mane
APP for Respondents: Mr M B Bharaswadkar
Advocate for Respondents : Mr C V Kolharkar For R-1.
Mr V B Jadhav h/f Mr. V D Hon For R.No.2

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CORAM : V.K. JADHAV, J.
Dated: December 22, 2016

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PER COURT :-

1. The learned counsel for respondent has raised a preliminary objection that in view of the provisions of Section 341 of the Cr.P.C., alternate efficacious remedy of filing an appeal against the order passed by the Magistrate is provided and therefore, this criminal writ petition is liable to be dismissed on that ground.

2. Section 341 of Cr.P.C. reads as under :-

341 Cr.P.C. :- Appeal.- (1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes

such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

3. In the instant case, it appears that the learned Magistrate has passed the order under section 340 of Cr.P.C.

4. In view of this, the petitioner may file an appeal as provided under section 341 of Cr.P.C. as reproduced above.

5. Writ Petition accordingly disposed of with the liberty as aforesaid to prefer an appeal under section 341 of Cr.P.C. if desire.

6. The petitioner may file an application for exclusion of the time spent on pursuing the present criminal writ petition in the light of the provisions of Section 14 of the Limitation Act for condonation of delay and the learned Judge of the Lower Appellate Court may consider the same in accordance with law.

(V.K. JADHAV, J.)

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aaa/-