

Ladda

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION No. 781 of 2016.
ALONG WITH
CRIMINAL WRIT PETITION No. 782 of 2016.
ALONG WITH
CRIMINAL WRIT PETITION No. 783 of 2016.
ALONG WITH
CRIMINAL WRIT PETITION No. 784 of 2016.
ALONG WITH
CRIMINAL WRIT PETITION No. 785 of 2016.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Manish Bohra i/by A.S.Khan & Assoc. for the petitioner.
Mr Samsher Garud a/with Ms Benedicta Lobo i/by Katariya & Associates for the respondent no.2.
Smt. R.V. Newton, APP for the State.

CORAM : A.S.GADKARI, J.
DATE : 27th April, 2016

P.C.

1) All these petitions challenge the order dated 8th January, 2016 passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in the following cases:

W.P.No.	C.C.No. of the Trial Court	Exh.No. of the trial Court and date of order.
781 of 2016	7021/SS/2015	Exh.4 Dated 8/1/2016.
782 of 2016	3407/SS/2015	Exh.B Dated 8/1/2016
782 of 2016	3408/SS/2015	Exh.5 Dated 8/1/2016

783 of 2016	3408/SS/2015	Exh.6 Dated 8/1/2016
784 of 2016	3408/SS/2015	Exh.6 Dated 8/1/2016

2) By the impugned orders the learned Trial Court has rejected the application of the accused for dismissal of the complaint as contemplated under section 257 of the Cr.PC. The learned Counsel for the petitioners submitted that, after the decision of the Supreme Court in the case of Dashrath Rupsingh Rathod v. The State of Maharashtra, reported in (2014) 9 SCC 129, it was the legal position that the complaint ought to have been filed before the appropriate Court having jurisdiction under sections 177 to 179 of Cr.PC. and in case a complaint was already filed, it was ordered to be returned for being presented before the appropriate Court. It is further contended that subsequently the Government of India has issued the Ordinance dated 29.12.2015, by which the complaint which is already filed is to be transferred from one Court to another Court of competent jurisdiction. The learned counsel for the petitioners submitted that in view of the judgment of the Supreme Court in the case of Dashrath Rathod (supra), in the present case, the complaint which was already filed, was returned to the complainant for filing it before the appropriate Court and that amounts withdrawal of the complaint and filing the same before the other Court having jurisdiction is not permissible. He further submitted that the return of the complaint amounts to withdrawal of complaint unconditionally and filing it before

the Competent Court of jurisdiction is not tenable in law. The said contention of the learned counsel for the petitioners cannot be accepted for the simple reason that in the present case the complainant never withdrew the complaint unconditionally. The record discloses that the complaint was simpliciter returned to the complainant for being filed before the Court having jurisdiction. The contention of the petitioner, therefore, cannot be accepted and in consequence thereof, application of Section 257 of Cr.P.C. to the facts of the present case does not arise. The petitions being devoid of any merits are, accordingly, dismissed.

(A.S. GADKARI, J.)