

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

WRIT PETITION NO.1162 OF 2015

Ramarao Rosaiah Nuthakki Vs. The State of Maharashtra & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. Kuldeep Patil i/b Ranjeet Patil for Petitioner.
Mr. S.A. Ghamre for Respondent No.2.
Mr. Deepak Thakare, APP for State.

CORAM : A.S. GADKARI, J.
DATE : 16th April 2016.

P.C.:

1] By the present petition, the petitioner has challenged the order dated 19.11.2014 passed by the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplande, Mumbai on the basis of report submitted by Police under Section 169 of Cr. P.C. in CR No.108 of 2012 registered with DCB CID Unit-III (originally registered with Worli Police Station bearing CR No.324 of 2012).

2] The petitioner is the original complainant. The Police after completing the investigation, submitted report under Section 169 of Cr. P.C. That the Investigating Agency submitted report thereby discharging the respondent No.2 from offences alleged against him. It is the contention of the petitioner that he was, ought to have been granted an opportunity of being heard before the report under Section 169 of Cr. P.C. was allowed by

the Trial Court. The learned Counsel for the petitioner in support of his contention has relied upon the judgment in the case of Maroti s/o Kaluba More Vs. State of Maharashtra reported in 2015 (4) Bom C.R. (Cri) 504 wherein it has been held that, it is mandatory that the learned Magistrate is under obligation to hear first informant before accepting the discharge as submitted by the Investigating Officer u/s 169 of the Code of Criminal Procedure.

3] Admittedly in the present case the petitioner, the original complainant was not granted an opportunity of being heard before accepting the report under Section 169 of Cr. P.C.. In view of the same, the impugned order dated 19.11.2014 passed by the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplande, Mumbai is hereby quashed and set aside and the report submitted by the Investigating Agency under Section 169 of Cr. P.C. is hereby restored on the file of the concerned Court.

4] The concerned Magistrate to issue notice to the petitioner and after granting opportunity of being heard, may passed appropriate orders as per the provisions of law.

5] The petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)