

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

CRIMINAL WRIT PETITION NO. 1346 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 Milind Deshmukh, for the petitioner.
Smt. Anamika Malhotra, APP for the State.

CORAM : A.S.GADKARI, J.
DATE : 20th April, 2016

P.C.

1) By the present petition under Article 227 of the Constitution of India, the petitioner has questioned the correctness of the order dated 5.1.2016 passed by the learned Judicial Magistrate, First Class, Indapur in RCC No. 121 of 1998.

2) The petitioner is original accused along with other co-accused who are absconding in CR No.50 of 1998 registered with Indapur Police Station, District Pune. The record discloses that after completion of investigation, the police have submitted a final report, culminated in RCC No. 121 of 1998 and is pending before the learned Trial Court for its committal to the Sessions Court. The offences alleged against the petitioner and other accused persons are under sections 397 and 395 of the IPC. The offences under sections 395 and 397 are exclusively triable by the Court of Session.

3) The record discloses that the learned Advocate for the applicants filed an application under section 317 of Cr.P.C. for separating the trial as the other co-accused persons are reported to be absconding. The learned Judicial Magistrate, First Class, by its order dated 5.1.2016 has rejected the said application on the ground that it is not maintainable before the said Court. The learned counsel appearing for the petitioner submitted that as a matter of fact the said application was filed under section 209 of Cr.P.C., for committing the trial to the Sessions Court and not under section 317 of Cr.P.C. The record discloses contrary to what has been argued by the learned counsel appearing for the petitioner. The application below Exh.31 filed before the Judicial Magistrate, First Class, in RCC No. 121 of 1998 is specifically under section 317 of Cr.P.C. and not under section 209 of Cr.P.C. The learned Trial Court while rejecting the said application has categorically held that as the offences are not triable by the said Court and, therefore, the said application filed below Exh.31 was not tenable before it.

4) I have perused the record annexed to the petition. I have also gone through the order passed by the Trial Court. I find that there is no error either on law or on facts. The present petition, being devoid of any merits, is accordingly dismissed.

(A.S. GADKARI, J.)