

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 408 OF 2016**

Ashok Kumar Dalmia ...Applicant
Versus
The Senior Inspector of Police & Ors. ...Respondents

**WITH
CRIMINAL APPLICATION NO. 355 OF 2016
IN
CRIMINAL APPLICATION NO. 408 OF 2016**

Nirmala Surendrakumar Dalmia ...Intervener

IN THE MATTER BETWEEN :

Ashok Kumar Dalmia ...Applicant
Versus
The Senior Inspector of Police & Ors. ...Respondents

Mr. Subodh Desai i/b Bachubhai Munim & Co. for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent-State

Mr. M. S. Mohite I/b Mr. Amol Jayant Phoujdar for the Intervener

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 28th APRIL, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P
for the State.

2. By this application, the applicant seeks the following amongst other prayers:

“(a) that this Hon'ble Court be pleased to call for the record and proceedings in C.R. No. 2 of 2015 that were handed over to the Respondent No. 2 by the order dated 26th February, 2016 passed by the Learned Metropolitan Magistrate's 27th Court, Mulund, Mumbai;

(b) that this Hon'ble Court be pleased to quash and set aside the Impugned Order dated 26th February, 2016 passed by the Learned Metropolitan Magistrate's 27th Court, Mulund, Mumbai in C. R. No. 2 of 2015.”

3. Learned Counsel for the applicant submits that the learned Magistrate could not have granted permission to re-investigate the case, as the same was impermissible in law. He relied on the Judgment of ***Vinay Tyagi vs. Irshad Ali @ Deepak & Ors.***¹.

4. Learned A.P.P has tendered an affidavit of Senior Police Inspector Mr. Vijaysinh Appasaheb Ghatage. The same is taken on record. She submitted that as the Commissioner of Police, Mumbai, had given his approval for 'further investigation' of C.R. No. 2 of 2015, the investigation was transferred from Mulund Police Station to the Economic Offences Wing. She submitted that in the application which was preferred before

¹ (2013) 5 SCC 762

the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai, on 26th February, 2016 for permitting further investigation, inadvertently, the word 'reinvestigation' was mentioned in the application, instead of 'further investigation'. She submits that infact, what was being sought was further investigation and not reinvestigation. She submits that the learned Magistrate ordered re-investigation as in the application re-investigation was mentioned, inadvertently instead of further investigation. She does not dispute that the learned Magistrate could not have ordered reinvestigation, as the same was impermissible in law. She, however, submits that the Economic Offences Wing will file an appropriate application seeking further investigation of C.R. No. 2 of 2015.

5. Perused the papers. It is not in dispute that the Magistrate could not have granted permission to re-investigate the case, in view of the Judgment in the case of ***Vinay Tyagi vs. Irshad Ali @ Deepak & Ors.*** What is permissible is further investigation and no re-investigation. Accordingly, the impugned order dated 26th February, 2016 passed by the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai, is quashed and set-aside, on this sole ground.

6. If an application is filed by the Economic Offences Wing seeking further investigation, the same shall be considered by the learned Magistrate, on its own merits, in accordance with law.
7. The application is accordingly disposed of.
8. In view of the aforesaid, the intervention application being Criminal Application No. 355/2016 does not survive. The same stands disposed of.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.