

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.408 OF 2015
WITH
CRIMINAL APPLICATION NO.302 OF 2016

Shrichand S.Aswani vs. State of Maharashtra

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. A.U. Nikam for the Applicant.

Smt.R.V. Newton, APP. for the State.

Mr,. Pawan Mali for the Applicant in APPP NO.302/2016.

CORAM : A.S.GADKARI, J.

DATE : 11th April,2016

P.C.

This is an application under Section 482 of the Code of Criminal Procedure by the original complainant, in CR No.37 of 2012 registered with Pimpri Police Station and culminated in R.C.C.No.479 of 2012 pending on the file of Judicial Magistrate First Class, Pimpri, District Pune, praying that, appropriate directions to the learned Judicial Magistrate First Class, Pimpri, Pune may be issued to expeditiously decide the protest petition filed by the applicant on 15.3.2013 in the aforesaid case.

2) The record discloses that applicant herein had filed CR

No.37 of 2012 registered with Pimpri Police Station, District Pune under Sections-143,147,148, 149, 427 of the Indian Penal Code and under Section 37(1) of the Arms Act read with 135 of the Bombay Police Act. The record further discloses that after completion of investigation the police have filed charge sheet against the five accused persons named in the final report dated 8.7.2012. It further appears from the record that in view of the evidence i.e. statements recorded by the police during the course of investigation, the police have appropriately submitted the final report or the charge sheet against the five accused persons named therein and did not send the charge sheet against the other alleged accused persons. From the gist of the facts mentioned in the final report, it appears that the applicant herein has filed the said crime arising out of earlier political enmity with the persons mentioned therein. After filing of the charge sheet, the learned Trial Court took cognizance of the offence on 11.7.2012 and issued process against the accused persons named therein.

3) The learned counsel appearing for the intervener with a view to assist the Court submitted that, as a matter of fact, on 5.1.2013 the Trial Court has already framed the charge against the

accused persons named in the final report. He submitted that therefore, the protest application filed by the applicant subsequently on 15.3.2013 is not maintainable. He further submitted that belated filing of protest application by applicant herein is sheer abuse of process of law. I find substance in the said contention of the learned counsel for the intervener.

4) It is to be noted that though the prayers made in the present application are prima faice innocuous in nature, it has far reaching repurcations. The record discloses that after completion of investigation police have submitted the final report on 8.7.2012. The learned Trial Court therefore, took cognizance on 11.7.2012. That, the charge under various sections of the Indian Penal Code in the aforesaid RCC No.479/2012 has been framed below Exh. 16 on 5.1.2013. It is after framing of the charge the applicant herein has filed the protest application on 15.3.2013. That the present case is a warrant case, instituted on police report, triable by the Magistrate. After the charge is framed under Section 240 of the Cr.P.C. the applicant herein has filed the protest application. The stage of filing such an application had already passed and the applicant cannot subsequently file such an application once the

charge is framed. If the applicant would have been so conscious about his exercise of the right, he would have filed such an application before the Trial Court immediately after the final report under Section 173 was filed by the police. In my view, the complainant cannot be permitted to file a protest application/petition in the final report as per his own convenience. In my considered opinion the filing of the protest application, after the charge is framed, is not tenable in law and the concerned Magistrate now cannot take its cognizance to decide it. As stated above, the trial has already begun and therefore, the protest application dated 15.3.2013 is not at all tenable in law. In view of the same, I find no merits in the application. The Application is accordingly, dismissed.

5) In view of dismissal of application No.408/2015, Criminal Application No.302/2016 for intervention does not survive and the same is accordingly disposed of.

(A.S. GADKARI, J.)