

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 2423 OF 2015

Devyani Ratilal Katira

.....Petitioner

V/s.

The State of Maharashtra and another

....Respondents

Mr. Sagar Bataria h/f Mr. Anand Giri Advocate for Petitioner.

Mr. Niranjana Mundargi h/f Mr. Chandra Naik for Respondent nos. 2 to 4

Ms. A. T. Jhaveri APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 20, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein questions the correctness and the validity of the order passed by learned Metropolitan Magistrate, 49th Court, Vikhroli dated 03/06/2014 in C.C. No. 87/SW/2014 rejecting the prayer for order under section 156 (3) of Code of Criminal Procedure, 1973. Being aggrieved by the said order, Petitioner had filed Criminal Revision Application No. 817 of 2014 before the Sessions Court at Bombay. Learned Sessions Court had taken into consideration the facts of the case.

4) Learned Magistrate and the learned Revisional Court had taken into consideration that in crime no. 314 of 2011 registered at Pant Nagar Police Station on 14/09/2011, mother of the present Petitioner was prosecuted for offence punishable under sections 465, 467, 468, 471, 420 r/w 34 of Indian Penal Code. Accused was protected by way of Pre-arrest bail.

5) On 23/12/2013, accused in crime no. 314 of 2011 filed a complaint to the Senior Inspector of Police that the developer, chief promoter has created forged and fabricated electric bill and filed same before Secretary, S.R.A. without knowledge of the accused and consent with the Secretary S.R.A. has declared her eligible on 13/10/2005 without giving her any hearing. It was also contended that the builder and promoter have created forged and fabricated verification report of the electric bill and therefore a request was made to the senior P.I. to register the F.I.R. against the developer, chief promoter, their associates and secretary, S.R.A. for the same. Thereafter, on 25/02/2014, original accused had expired. Present petitioner happens to be daughter of the original accused in crime no. 314 of 2011, filed a complaint before learned Magistrate seeking action under section 156 (3) of Code of Criminal Procedure, 1973. Learned Magistrate had rightly considered that

there cannot be a second F.I.R. in the same case which was under investigation.

6) Learned APP upon instructions submits that in crime no. 314 of 2011 investigation is completed and charge-sheet is filed on 01/04/2014.

7) Learned counsel for the Respondent submits that contentions in the original complaint as well as present petition would be in the nature of defence of the accused in the crime no. 314 of 2011. Original accused has expired and the criminal proceedings would in fact stand abated against original accused, however, petitioner who happens to be the daughter of the original accused has raised several contentions and attempted to demonstrated that authorities should be arraigned as accused. Revisional Court has also rightly recorded that after recording verification of the applicant/complainant and witnesses learned Magistrate may issue process against the accused/respondent or may call inquiry report under section 202 of Code of Criminal Procedure, 1973 and thereafter decide as to whether complaint deserves to be proceeded with or dismissed under section 203 & 204 of Code of Criminal Procedure, 1973. Complaint was filed at a premature stage.

8) In view of this, Revisional Court had rightly rejected the revision

application. This Court is of the opinion that in fact an accused would have no locus to file an application at a premature stage seeking the relief of accused persons to be arraigned as accused. It would depend on material in the charge-sheet and at the stage of recording evidence and at that stage in the fitness of circumstances, the Court may add or arraign accused persons under section 319 of Code of Criminal Procedure, 1973. However, as on today, the order passed by learned Magistrate refusing to issue directions under section 156 (3) of Code of Criminal Procedure, 1973 which was confirmed by the Revisional Court vide order dated 15/04/2015 are perfectly justified. The reasons are justifiable and hence, no interference is warranted. Hence, following order.

- (i) Writ petition being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)