IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.789 OF 2016

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Smt.Pushpa Pandurang Mokal & ors. ...Applicants

v/s.

State of Maharashtra and ors. ...Respondents

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Mr.Kuldeep S.Patil a/w Ms.Heena Suvarnakar for the Applicants.
Dr.F.R.Shaikh, APP for the State.

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CORAM : A.S.OKA &
A.A. SAYED, JJ.
DATED : 19 JULY 2016

ORAL JUDGMEN: *(Per A.S.Oka,J.)*

Heard the learned Counsel appearing for the Applicant and the learned APP for the State. Considering the narrow controversy involved in the Application, forthwith taken up for final disposal. Considering the peculiar facts of the case and the directions which we propose to issue, in our opinion, notice to the second Respondent is not necessary.

2. The second Respondent is the First Informant, at whose instance CR.216/15 was registered with CBD Police Station, Navi Mumbai. The FIR was registered for the offences punishable under Sections 420, 465, 467, 468, and 471 read with Section 34 of the Indian Penal Code. In the Application, it is pointed out that the Investigating Officer after completing

the investigation has filed a final report under Section 169 of the Code of Criminal Procedure, 1973 (for short “CRPC”) before the Court of the Judicial Magistrate, First Class, Vashi at Navi Mumbai. The report was filed on 7 April 2016. The report is for claiming “C”-summary. It appears that on 16 April 2016, the Investigating Officer (Asst.Inspector of Police of CBD Police Station) addressed an application to the learned Judicial Magistrate stating that as the second Respondent has made an application to the Higher Officers for re-investigation of the offence, the original documents submitted alongwith the report be returned to the Investigating Officer for the purposes of re-investigation.

3. Notwithstanding the filing of the Report claiming “C”-summary, the present Application under Section 482 is filed for quashing the First Information Report on the ground that now re-investigation will be commenced by the Investigating Officer, as on 16 April 2016 itself, the learned Magistrate returned the original documents to the Investigating Officer.

4. Learned APP has produced for perusal of the Court relevant extracts of the case diary of 7 April 2016 referring to the report submitted before the learned Magistrate recording that the dispute was purely of a civil

nature. The entry in the case diary of 16 April 2016 records that the Reader working in the office of the Deputy Commissioner of Police informed the Investigating Officer to meet the Deputy Commissioner of Police, Zone-1 aongwithg the papers of the investigation of the case. It records that on the basis of directions issued by the Deputy Commissioner, a request was made by the Investigating Officer to the learned Magistrate for return of the papers and accordingly, the papers have been submitted to the Deputy Commissioner.

5. Learned APP, on instructions of the Investigating Officer, states that the action has been taken on the basis of the oral instructions of the Deputy Commissioner of Police, as recorded in the case diary.

6. We have carefully perused the Application/letter dated 16 April 2016 addressed by the Investigating Officer to the learned Magistrate. Admittedly, no order was made by the learned Magistrate on the Report dated 7 April 2016, when the said Application was made by the Investigating Officer. Without the learned Magistrate passing appropriate order in accordance with law on the final report, the Investigating Officer had no power to re-investigate the offence. Considering the scheme of the CRPC and in particular from Sections 168 to 173, it is crystal clear that the

Investigating Officer had no power to take back the original papers submitted to the Court of the learned Magistrate alongwith the report claiming "C"-summary for the purpose of carrying out re-investigation. In our view, the Investigating Officer could not have sought return of the documents for the purpose of carrying out re-investigation.

7. Therefore, the Investigating Officer will have to resubmit the documents, which were withdrawn from the Court of the learned Magistrate on the basis of the order dated 16 April 2016. The learned Magistrate will have to issue notice to the First Informant and will have to pass appropriate order in accordance with law on the basis of the said report after giving an opportunity of being heard to the First Informant.

8. Hence, the Application must succeed and we pass the following order:

O R D E R

(i) We set aside the order of the learned Judicial Magistrate, First Class at Vashi, Navi Mumbai passed on 16 April 2016, by which he directed the Assistant Superintendent to return the original documents filed by the Investigating Officer;

(ii) Learned Magistrate will issue notice of the final report to the second Respondent (First Informant) and shall pass appropriate order on the report submitted by the Police on 7 April 2016 in accordance with law. All contentions of the parties, in that behalf, are kept open;

(iii) The Application is partly allowed on the above terms.

(A.A. SAYED, J.) **(A.S.OKA, J.)**