

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 850 OF 2016

Jayant Vitthalrao Wanjari ... Applicant.

v/s.

The State of Maharashtra ... Respondent.

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Mr. Kuldeep Patil a/w Ranjeet Patil for the Applicant.

Mr. A. S. Patil, APP for the State.

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CORAM : A. S. GADKARI, J.

DATE : 27th July, 2016.

P.C.:

1. By the present application under section 482 of the Code of Criminal Procedure the applicant/original complainant has prayed that, the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai be directed to expeditiously decide the application below Exh-5 in C.C. No. 431/PW/2015 filed by the applicant, for further investigation, as early as possible and the Magistrate be directed to pre-pone the date of hearing of the application filed below Exh-5 for further investigation.

2. Though the prayers made in the present application are prima facie innocuous in nature, it has its own repercussion with

respect to the right of the de facto complainant to file such an application after charge-sheet is filed. Therefore, the point involved in the present application is that; whether an application for further investigation under section 173 (8) of the Criminal Procedure Code at the instance of the de facto complainant is permissible and maintainable after filing of the charge-sheet under Section 173 (2) of the Cr.P.C.?

3. The Applicant is the original complainant in C.C.No.11/SW/2014. The learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai, after perusing the complaint and the documents annexed in support of it, by its Order dated 5/3/2014, was pleased to direct the concerned Police Station Officer to carry investigation under section 156 (3) of Cr.P.C. as per law. The record reveals that the concerned Police i.e. the Mulund Police Station, thereafter lodged the First Information Report bearing MECR No.1/2014 and conducted investigation. That the investigation culminated into filing of the final report as contemplated under section 173 (8) of Cr.P.C, bearing C.C. No.431/PW/2015 in the Court of Metropolitan Magistrate, 27th Court, at Mulund, Mumbai.

4. As the applicant being the complainant was of the view that, the further investigation in the said crime is necessary, he filed an application dated 30/6/2016 below Exh.5 in C.C.No.431/PW/2015 and the same is pending for orders before the said Court. The applicant, has, therefore, preferred the present application as stated herein above.

5. A useful reference at this stage can be made to the decision of the Supreme Court in the case of **Reeta Nag V/s. State of West Bengal** reported in **(2009) 9 SCC 129**, wherein, after taking into consideration the various decisions of the Supreme Court, it is held that once the charge-sheet is filed under Section 173 (2) of Cr. P. C. further investigation at the instance of the de facto complainant is not permissible, as such a course of action was beyond the jurisdictional competency of Magistrate. It is held that further investigation on an application at the instance of the Investigating Authority is permitted. Therefore, the issue as regards the permissibility and maintainability of an application under section 173 (8) of Cr.P.C. at the instance of de facto complainant after filing of charge-sheet under section 173 (2) of Cr.P.C. is decided in the

said Judgment.

6. The learned counsel appearing for the applicant submitted that in a subsequent decision i.e. in the case of **Vinay Tyagi V/s. Irshad Ali @ Deepak & Ors.** reported in **(2013) 5 SCC 762**, the Supreme Court, while considering the provisions of Section 173 (8) and 156 (3) of Cr.P.C. after taking into consideration the various decisions of the Supreme Court, has formulated conclusions in paragraph 40 in regard to the powers of Magistrate in terms of section 173 (2) read with section 173 (8) and section 156 (3) of Cr.P.C. In paragraph 40.2 of the said decision, the Supreme Court has held that a Magistrate has the power to direct “further investigation” after filing of a police report in terms of section 173 (8) of the Code. It is further held in paragraph 40.4 of the said decision that, neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. That the language of section 173 (2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provision of section 156 (3) and the language of section 173 (8) itself. That, in fact, such power

would have to be read into the language of section 173 (8) of Cr.P.C.

7. There cannot be any dispute or quarrel with respect to the parameters and/or guidelines laid down by the Supreme Court in the case of Vinay Tyagi (supra). A further useful reference at this stage can be made to the recent decision of the Supreme Court in the case of **Pooja Pal Vs. Union of India** reported in (2016) 3 SCC 135, wherein the Supreme Court after summarizing the law in the field, including the decision in the case of Vinay Tyagi (supra), has held that the regular Court is empowered only to direct further investigation.

8. It is, thus, clear from the decisions in the case of Vinay Tyagi (supra) and Pooja Pal (supra) that there is no impediment or fetters on the powers of the Magistrate while passing the orders under section 173 (8) of Cr.P.C for further investigation after filing of the final report under section 173 (2) of Cr.P.C. by the police.

9. However, the issue involved in the present application as quoted herein above, is decided by the Supreme Court in the case of Reeta Nag (supra). And hence an application for further

investigation under section 173 (8) of Cr.P.C. at the instance of the de facto complainant after filing of the charge-sheet under section 173 (2) of Cr.P.C. is not permissible and maintainable. It is permissible and maintainable at the instance of the investigating agency only.

10. In the premise of the settled legal position, I am of the considered view that the application filed by the applicant below Exh-5 in C.C. No. 431/PW/2013 pending on the file of the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai, itself, is not maintainable and deserves to be rejected.

11. In view of the above, I find no substance in the present application and the application is accordingly dismissed.

(A. S. GADKARI, J.)