

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2740 OF 2016

Sangita Rajendra Chatake & ors. ... Petitioners.

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. Kuldeep U. Nikam, advocate for petitioners.

Mr. A.R. Patil, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : AUGUST 12, 2016

P.C.:

1 Heard the learned Counsel for the petitioners and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioners herein questions the correctness and legality of
clause 5 of the operative order in the Judgment in Sessions Case No.
320 of 2014 delivered by the learned Sessions Judge, Solapur vide
Judgment and Order dated 9th March, 2016 wherein after recording
of evidence, the learned Sessions Judge has issued show cause notice
to P.W. 1, P.W. 3, P.W. 4 under Section 340/344 of the Code of
Criminal Procedure, 1973. The said show cause notice is challenged
under Section 482 of the Code of Criminal Procedure, 1973.

4 The learned Counsel for the Petitioners fairly submits that the
Petitioners have filed their reply to the show cause notice. The appeal
is filed by the original accused, who is convicted under Section 302 of
the India Penal Code and the said appeal bearing Criminal Appeal No.
276 of 2016 is pending before the Hon'ble Division Bench of this
Court.

5 Section 340 of the Code of Criminal Procedure, 1973 reads as
under :

“340. Procedure in cases mentioned in section 195.(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
- (b) in any other case, by the presiding officer of the Court.

(4) In this section, " Court" has the same meaning as in section 195.”

6 The learned Counsel for the petitioner vehemently submits that the original accused has preferred an appeal impugning the Judgment and Order by which, he is convicted and therefore, appropriate provisions would be section 344 of the Code of Criminal Procedure, 1973. Section 344 sub-clause 1 contemplates summary enquiry after issuance of show cause notice.

7 No interference can be called for in the impugned order. The very fact that the petitioners have filed their reply to the show cause notice, the learned Sessions Court shall decide the matter on the basis of the show cause notice as contemplated under section 344 of the Code of Criminal Procedure, 1973. The petition stands dismissed. Rule is discharged. All contentions are kept open. The Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)