

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3308 OF 2014

Bharat G. Kakadia & Anr.

.. Petitioners

V/s.

The State of Maharashtra & Anr.

.. Respondents

.....

Mr.Subhash Jha a/w. Ms.Rushita Jain i/b. M/s. Law Globel,
Advocate for the Petitioners.

Mrs. M.M. Deshmukh, APP for the Respondent – State.

.....

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DATED : JULY 13, 2016.

P.C. :

Petitioner had earlier approached this Court in the year 2010 by filing writ petition no.2138 of 2015. This Court in paragraphs 5 and 6 of order dated 4th August, 2010 has observed thus:

5 *It is well settled that the trial court, if satisfied, has the powers to direct further investigation under Section 173(8) of Cr.P.C. and as per the amended provisions of the said Code, the complainant is entitled to engage an advocate so as to assist the prosecutor before the trial court. Prima facie, it appears that it is*

for the petitioners to prove that they had handed over the diamonds to the accused for sale and that he did not return the same or the proceeds of the sale were not paid to them.

6 *Hence, there is no case to entertain this petition so as to direct the Economic Offences Wing, to undertake further investigation and we make it clear that if and when the trial court is called upon to consider the issue of further investigation, this order will not come in its way and such an application will have to be considered by the trial court on its one merits.*

2 Petitioners being complainants filed Miscellaneous Application No. of 2012 in C.C. No.397/PW/2009 before the learned Metropolitan Magistrate 18th Court at Girgaum, Mumbai. Petitioners submit that they have filed the said Misc. Application on 10th August, 2012, praying following relief:

“a) *that this Hon'ble Court may be pleased to direct further investigation in exercise of the powers vested under section 173(8) of Cr.P.C. by directing the Respondent police station and / or any other investigating agency as this Hon'ble Court may deem fit and proper to conduct further investigation concerning MECR No.9 of 2009 of D.B. Marg police station and collect the*

evidence which has remained to be collected during the course of investigation conducted earlier and which lacunae and/or lapse in the investigation being more particularly mentioned and set out in para 5 of this application.

- b) any other further order and / or direction may be given as the facts and circumstances of the case may require.”*

3 Learned Metropolitan Magistrate 18th Court, Girgaon, Mumbai passed order on 4th October, 2012 below Exhibit-24/D in C.C.No.397/PW/2009. In paragraphs 4 and 5, the learned Magistrate observed thus:

“4. Considering contention of the Ld. APP. and the point raised by them in para No.5 (a to g) in this application, the concerned I.O. has not carried out fair and proper investigation in the case and this is a fit to direct the further investigation on the aforesaid point.

5 *The Hon'ble Bombay High Court while deciding Cri. W.P. No.2138/2010 on 04.08.2010 has specifically observed in para No.5 that, the trial court / this court, if satisfied has power to direct further investigation U/sec. 173(8) Cr. P. Code. Hence, the order.*

ORDER

Sr.P.I. Police station D.B. Marg, Girgaon, Mumbai is hereby directed U/sec. 173(8) to get done further investigation in M.E.C.R.No.09/2009 and to file detail report."

4 Learned counsel appearing for the petitioners submits that investigation was carried out thereafter and a supplementary report was filed under Section 173(8) of Cr.P.C. As petitioner was not satisfied with the said report, further investigation was conducted. An application was filed on 12th October, 2012 before the learned Metropolitan Magistrate 18th Court, Girgaum, Mumbai seeking direction that further investigation be conducted by EOW Unit - III, Crime Branch, Mumbai instead of D.B. Marg police station. Trial Court passed an order below Exhibit-32/D in C.C. No.396/PW/2009 on 26th April, 2013 (Exhibit-F colly) rejecting the said Application. Paragraphs 3 and 4 of the order read as under:

"3 Considering contention of Ld. A.P.P. and on perusal of the record it is found that Hon'ble Division Bench of the Bombay High Court in Cri. Writ Petition No.2138/2010 vide order dated 04/08/2010 has already clarified in para no.6 of said order that, "there is no case to entertain that petition so as to direct the E.O.W.

to undertake further investigation". So, there is no question of taking different view by this court.

- 4 *Not only this after the said order of Hon'ble High Court and observations therein the prosecution and informant have filed application Exh.-29/D in this court under the same section i.e. 173(8) of Cr. P. Code and this court has also directed for further investigation vide order dated 04/10/2012 on the said application. So, now certainly the question of transfer of the further investigation to E.O.W. does not arise. Secondly, E.O.W. being a special branch of investigation like C.B.I., it would not be just and proper to transfer the investigation to it. Hence, the order,*

O R D E R

1. *Application Exh.-32/D is rejected."*

Learned APP refers to a circular dated 29th March, 2007 annexed to the petition which clarifies Standing Order No.140. Perusal of the said circular shows that the present case could be investigated by the police.

5 Under order dated 4th August, 2010 the Division Bench of this Court in Criminal Writ Petition No.2138 of 2010 clearly observed that there was no case made out to direct the Economic Offences Wing to undertake further investigation. The trial Court directed the Senior Police Inspector, D.B. Marg Police Station, Girgaon, Mumbai to conduct further investigation under Section 173(8) of the Code of Criminal Procedure by an order dated 4th October, 2012.

6 Learned counsel appearing for the petitioners submits that the petitioners are not satisfied even with the further investigation conducted. In the facts, we are not inclined to interfere further. As and when the trial proceedings begin and the evidence will be led, it would be for the Court to take appropriate view of the matter in respect of the evidence collected and to be produced on record. With these observations, petition stands disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)