

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3853 OF 2014

Smt. Ashalata Vithal Bhatkar

(since deceased)

1A. Smt. Sheela Vithal Bhatkar

(Legal heir) daughter of petitioner. ... Petitioner

vs.

Mr. Subhash J. Ghatge & Ors. ...

Respondents
(Orig. accused Nos. 3 & 4)

Mr. S.R.More, Advocate for the petitioner.

Ms. Anushka A. Shreshtha a/w Mr. C.M.Chavan for respondent No.1.

Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.

DATE : 14th June, 2016.

P.C.

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

2. The learned counsel for the petitioner submits that one Ashalata Vithal Bhatkar had filed a complaint before the learned Addl. Chief Metropolitan Magistrate, 5th Court, Bhoiwada, Mumbai, in October, 2008 against four accused persons. The said complaint was registered as

C.C.No.40/2009. On 29.4.2009, the learned Magistrate had issued process against accused No.1 and 2.

3. Being aggrieved by the said order, the original complainant had filed Criminal Revision Application No.13 of 2010 before the Court of Sessions. By an order dated 22.10.2010, the Revision Application was partly allowed. The learned Revisional Court had directed to take fresh hearing of the original complainant in respect of the complaint against the original proposed accused Nos. 3 and 4 and pass appropriate orders according to law. The complainant had filed an application on 8.2.2011 before the learned Magistrate seeking the prayer of issue of process against the accused Nos. 3 and 4. The learned magistrate by an order dated 6.8.2012 was pleased to dismiss the application seeking prayer of issuing process against the original accused Nos. 3 and 4. Being aggrieved by the said order, the original complainant i.e. the present petitioner No.1 (since deceased) had filed Criminal Revision Application No.281 of 2012. The learned Sessions Court by an order dated 5.5.2014 was pleased to dismiss the Revision Application. Hence, the present Writ Petition.

4. It is pertinent to note that the petition herein was filed on 12.9.2014. The petitioner No.1 had expired on 31.7.2014 i.e. prior to

verification of the petition which was done on 12.9.2014.

5. It is the contention of the petitioner that petitioner No.1 expired on 31.7.2014. The application was filed before the learned Magistrate seeking the prayer of bringing legal heirs on record on 7.10.2014. It is pertinent to note that there is no specific application in the present petition that an application filed on 7.10.2014 seeking relief of bringing legal heirs on record is pending before the learned Magistrate and no such permission was sought before this Hon'ble Court. The learned counsel for the petitioner on his own accord has brought on record the legal heir of the complainant who happens to be the present petitioner.

6. This Court (Coram: Smt. Sadhana S. Jadhav, J.) had issued notice to respondent Nos. 1 and 2 by an order dated 26.8.2015. None appeared for the petitioner on 9.9.2015. The death certificate was brought on record by the petitioner. On 12.2.2016, the learned counsel for the petitioner had prayed to delete respondent No.2 as he had expired. It was brought to notice by the learned counsel for the respondent that the application filed by the petitioner to bring the legal heir of the original complainant on record is pending before the learned Magistrate. The

learned counsel for the petitioner had not made any prayer before this Court to amend grounds of the Petition as it was not brought to the notice of this Court.

7. The learned counsel for the petitioner submits that as on today, the said petition is still pending. It can therefore be safely inferred that no Court has granted permission to the present petitioner to step into the shoes of the original complainant and hence the case of the petitioner cannot be heard. In view of this, the learned counsel for the petitioner seeks liberty to withdraw the petition. Liberty as prayed for is granted in the interest of justice with further liberty to take appropriate course of action in accordance with law after the application seeking the relief of bringing legal heirs on record is decided on merit by the learned Metropolitan Magistrate.

8. It is made clear that the learned Metropolitan Magistrate shall not be influenced by the observations made by the revisional Court or this Court and shall decide the said application on its own merits.

Rule is discharged. Writ Petition stands disposed of.

(SMT.SADHANA S.JADHAV, J.)