

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4315 OF 2014**

Capt. Pheroze Dinshaw Dastur		Petitioner
vs.		
The State of Maharashtra & Anr.		Respondents

Mr. Siddhesh Bhole i/b. Haresh Jagtiani & Associates, Advocate for the petitioner.

Mr. A.A.Bhore, Advocate for respondent No.2.

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

**CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 27th July, 2016.**

P.C.

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

2. Prayer (b) in the present Petition is as follows :-

“(b) Pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to injunct the Respondent No.2 and/or any one acting on his behalf including his Advocate from in any way interfering and/or making submissions across the bar in C.C. No.844/PW/2003 pending on the files of 37th A.C.M.M's Court, Esplanade, Mumbai.”

3. Heard the learned counsel for the respondent at length.
4. It appears that although the trial in C.C. No.844/PW/2003 pending before the 37th A.C.M.M. Court, Mumbai has been expedited by the various orders of the Court, yet, the trial has not effectively proceeded.
5. The learned counsel for the petitioner submits that there is interference by the learned counsel appearing for the complainant at every stage and that is precisely the reason why the trial has not progressed. It is also brought to the notice of this Court that the learned Magistrate had permitted the learned counsel appearing for respondent No.2 to file Vakalatnama, the same was taken on record, the appearance of the learned counsel appearing for the defacto complainant was recorded at every stage, despite the fact that no application under Section 302 of Cr.P.C. was filed by the complainant. The learned Magistrate has permitted the complainant to assist the prosecutor.
6. The learned counsel for the petitioner submits that instead of assisting the prosecutor at an appropriate stage, the defacto

complainant has taken charge of the matter and, therefore, there is no progress in the trial. This Court cannot be oblivious of the fact that, however sensitive the case may be, the trial is pending for the past 13 years, that too despite directing expeditious trial.

7. The learned counsel for the respondent has fairly admitted that the defacto complainant has not filed any application under Section 302 of Cr.P.C. However, the vakalatnama has been taken on record, his appearance is also taken on record. Assistance to the prosecution shall not be construed as taking charge of the matter and substituting the prosecutor. The complainant would be at liberty to assist the prosecutor whenever necessary to clarify or demonstrate the factual position but not beyond that. The learned counsel for the respondent fairly submits and almost gives an oral undertaking to the Court that he has no objection for directing expeditious trial and that the defacto complainant or the learned counsel appearing for the defacto complainant would only assist the prosecution and shall not cause any interference in the smooth functioning of the Court. This Court cannot be oblivious of the fact that the Hon'ble Apex Court by an order dated

1.3.2013, had directed the trial Court to frame charges and pass appropriate orders on the same, as expeditiously as possible, and in any case, within six months from the date of passing of the said order. The same was observed by this Court in the order dated 13.1.2014. The learned counsel for the petitioner submits that the delay cannot be attributed to the petitioner alone as there has been a substantial intervention by the defacto complainant at every stage. The charge is framed on 5th May, 2014 and till today, there is no progress. The learned counsel for the respondent undertakes that the defacto complainant would not interfere at every stage. The solemn word of the senior Advocate is accepted by this Court.

8. The learned counsel for the respondent fairly submits that the prosecution, as on today, desires to examine only 8 witnesses to prove its case.

9. Taking into consideration the delay caused , the following order needs to be passed :-

The learned Magistrate shall make an endeavour to

conclude the recording of evidence as far as possible within nine months from the date of receipt of this order. The learned Magistrate shall see to it that the trial is conducted by the prosecutor in charge of the case and the learned counsel appearing for the respondent shall be permitted to assist the prosecutor as and when required.

The observations in paragraph 9 of the impugned order dated 26.9.2014 are expunged in the interest of justice.

Rule is made absolute in the above terms. Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)