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FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4640 OF 2014

Sou. Sushama Anil Bhosale ..Petitioner.
Vs
The State of Maharashtra & Ors ..Respondents.

Mr S.V. Kotwal i/by A.S.Sawant for the petitioner.
Smt. Anamika Malhotra, APP for the State.
Mr Shrishail Sakhare for the respondents no. 2 to 8.

CORAM : A.S.GADKARI, J.
DATE : 2nd May, 2016

P.C.

- 1) Heard the learned counsel for the petitioner, the respondents and the learned APP.
- 2) By the present petition, the petitioner original complainant in MECR No. 4 of 2011 registered with Pangari Police Station, Barshi under sections 498-A, 452, 323, 504, 506 read with section 34 of the IPC culminated in R.C.C. No.201/2011 has challenged the order dated 14.11.2014 passed below Exh.1 in RCC No. 210 of 2011 by the learned Judicial Magistrate, First Class, Barshi.
- 3) The learned Trial Court by the impugned order dated 14.11.2014 has closed the evidence of the prosecution on the ground that, in spite of specific directions given by the Court, on previous occasion and though sufficient opportunities were granted to the prosecution for adducing

their evidence the prosecution failed to produce its remaining witnesses. That, no application was filed on behalf of the prosecution for issuance of witness summons and it appeared to the Trial Court that the prosecution is not interested to examine its remaining witnesses. The record further discloses that on 19.11.2014 the learned Trial Court further rejected the application of the prosecution for recording its evidence on the ground that it has already passed an order below Exh.1 dated 14.11.2014 and the evidence of the prosecution was closed vide the said order.

4) The learned counsel appearing for the petitioner submitted that it appears to the petitioner – original complainant that with a view to help the respondents no. 2 to 8 who are the original accused, the Investigating Officer and/or the police personnels have colluded with them. He further submitted that it is the precise reason, the complaint of the petitioner was not recorded under section 154 of Cr.P.C. by the police and she had to take recourse for proceedings as contemplated under section 156 (3) of Cr.P.C. He further submitted that it is the case instituted on police report and unless and until the Investigating Officer is examined in support of the prosecution case, the entire prosecution would fall. He, therefore, submitted that the impugned order dated 14.11.2014 passed by the learned Trial Court below Exh.1 may be quashed and set aside.

5) Per contra, the learned counsel appearing for the respondents-accused submitted that it was for the prosecution to produce

the witnesses at the time of trial which the prosecution has failed to do and, therefore, the learned Trial Court has passed the appropriate order. He submitted that the petition may be dismissed.

6) I have perused the entire record annexed to the petition. The learned Trial Court ought to have taken into consideration the fact that by closing the evidence of the prosecution by the impugned order dated 14.11.2014 would only cause injustice on the complainant who had to initially took recourse to the provisions of Section 156 (3) of Cr.P.C.,for registration of the offence under section 498-A, 324, 504, 506 read with Section 34 of the IPC. The Magistrate ought to have directed the prosecution to at least examine the Investigating Officer, without whom the evidence of the prosecution will not be completed. By closing the evidence of the prosecution the Trial Court has committed an error apparent on the face of record.

7) In view of the peculiar facts of the present case, the impugned order dated 14.11.2014 passed below Exh.1 and the subsequent order dated 19.11.2014 are hereby quashed and set aside. The prosecution is hereby directed to lead the evidence of the necessary and relevant witnesses including the Investigating Officer. It is needless to mention that if the Investigating Officer is not remaining present before the Trial Court for adducing the evidence, the Trial Court may make its report of the same to the Superintendent of Police, Solapur (Rural)for his

attendance before the Court. The learned Addl. Public Prosecutor appearing in the present petition is hereby directed to communicate this order to the Superintendent of Police, Solapur (Rural). The learned APP is hereby further directed to communicate the present order to the concerned Public Prosecutor conducting RCC No.210 of 2011.

8) All the concerned to act upon an authenticated copy of this order.

(A.S. GADKARI, J.)