

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

**CRIMINAL WRIT PETITION NO. 66 OF 2017**

Shri Shirish Madhukar Deshpande.                   ... Petitioner.  
Versus  
The State of Maharashtra & anr.                   ... Respondents.

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Mr. Sanjeev P. Kadam, advocate for petitioner.

Mr. V.B. Konde-Deshmukh, APP for State.

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**CORAM : SMT.SADHANA S. JADHAV,J  
DATE : APRIL 18, 2017**

**P.C.:**

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

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

3      Being aggrieved by the order dated 23<sup>rd</sup> March, 2015 passed by  
Judicial Magistrate First Class, Court No. 7, Pune, the Petitioner has  
approached this Court.

4      The Petitioner herein happens to be the original complainant  
in C.R. No. 616/2012 registered with Loni Kalbhor Police Station.  
Investigation is completed. The Petitioner had gone through the  
compilation of the charge-sheet and was surprised that the  
investigation is not conducted from all angles. Although it appeared  
to be a fair investigation, the Petitioner had noticed certain lacunas  
in the charge-sheet, which would go to the root of the matter and it  
would be necessary for prosecuting the case against the accused.

5      This Court cannot be oblivious of the fact that in a petition filed  
by the present petitioner, the Hon'ble Division Bench of this Court had  
taken cognizance and the same was treated as PIL No. 33 of 2011.  
This Hon'ble Court had directed the police to examine the contention

raised by the Petitioner. It appears that the police had then registered C.R. No. 616 of 2012 on 16/12/2012 i.e. just one day prior to the scheduled hearing of the PIL. It was expected that the investigating agency would consider the allegation from all angle after filing of charge-sheet. The same was registered as R.C.C. No. 0403599/2013.

6 The Petitioner had then filed an application under section 173(8) of the Code of Criminal Procedure, 1973 seeking further investigation on the points urged by him. No doubt the application under section 173(8) of the Code of Criminal Procedure, 1973 was filed in the personal capacity by the complainant. The learned Magistrate had considered the application and had rightly arrived at a conclusion that the complainant would not have the locus to file an application under section 173(8) of the Code of Criminal Procedure, 1973, for the simple reason that the complainant could not have stepped into the shoes of the investigating agency. Hence, the learned Magistrate had observed that De-facto complainant has no

voice or right to file such application in this Court seeking relief under section 173(8) of the Code of Criminal Procedure, 1973. In the interest of justice, it would be appropriate for the present petitioner to file an application under section 173(8) of the Code of Criminal Procedure, 1973 through the prosecution. The learned APP also submits that in view of the fact that the Petition of the present Petitioner was treated as PIL by the Hon'ble Division Bench. He would also, on behalf of the State, support the case of the Petitioner.

7 The learned Counsel for the Petitioner submits that the Petitioner is also desirous of filing an application under section 301 of the Code of Criminal Procedure, 1973 in R.C.C. No. 3599 of 2013. There is no doubt that the Petitioner has right to file such application, which can be considered in accordance with law. The Petitioner shall approach public prosecutor conducting R.C.C. No. 3599 of 2013 and demonstrate lacunas in the charge-sheet and therefore, necessity of further investigation. The prosecutor shall file that application before

the learned Magistrate, which shall be considered by the learned Magistrate in accordance with law. Rule is made absolute in the above terms.

8 The Petition stands allowed and disposed of accordingly.

**(SMT. SADHANA S. JADHAV,J)**