

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2741 OF 2015

ALONG WITH

CRIMINAL APPLICATION NO.32 OF 2017

Smt. Bharati Sachin Rameshchandra.] ... Petitioner

Versus

The State of Maharashtra.] ... Respondent

Mr. S. P. Kadam i/b Mr. Prashant Badole for Petitioner.

Ms. S. D. Shinde, APP for State.

Mr. Mubin Solkar i/b Ms. Tahera Qureshi for Internever / Applicant in Criminal Application No.32 of 2017.

CORAM :- RANJIT MORE &
SARANG V. KOTWAL, JJ.

DATE :- 18 JULY, 2017

P. C. :-

1. Heard Mr. S. P. Kadam, learned Advocate for the petitioner, Ms. S. D. Shinde, learned APP for the State. We have also heard Mr. Mubin Solkar, learned Advocate for accused, in the interest of justice.

2. The petition is filed for the following main reliefs :

“(b) That by an appropriate writ, order, direction issued by this Hon'ble Court, the Respondent Nehru Nagar Police Station be directed to file the Additional documents / compilation (Exhibit C herein) as part of Chargesheet in C.R.No.224 of 2010 vide Case No.8/PW/2011 pending in the Court of Ld. Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai as per the provision u/s. 173 (8) of Cr.P.C.

(c) The Respondent / Nehru Nagar Police Station be directed to conduct necessary further investigation in regard to the conversations / 4 CDs supplied by the Petitioner under the appropriate provisions of law and to file the report, evidence of the same as an Additional Charge Sheet before the Ld. Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai.”

3. The FIR bearing C.R.No.224 of 2010 was registered at the instance of the petitioner with Nehru Nagar Police Station for the offences punishable under Sections 420, 498A and 506(II) r/w 34 of the IPC against her husband and in-laws, totally 6 accused. After completing the investigation of the subject FIR, the Investigating Officer filed charge-sheet in the Court of learned Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai, which is numbered as C.C.No.8/PW/2011.

4. Mr. Kadam, learned Advocate for the petitioner, stated that out of 6 accused, 4 accused, namely in-laws, filed an application for discharge before the learned Magistrate and this application came to be rejected on 08/11/2012. These 4 accused thereafter preferred a

Revision Application before the Sessions Court. The learned Sessions Judge partly allowed this Revision Application by his order dated 16/08/2014, thereby 2 accused came to be discharged and the application of remaining 2 accused was rejected. Mr. Kadam submitted that the revisional order discloses that the learned Sessions Judge passed the said order after perusal of the charge-sheet which contained 1 to 28 pages only. The grievance of Mr. Kadam is that though the original charge-sheet contained 1 to 259 pages and 4 CDs, the Revision Application was decided by the learned Sessions Judge on the basis of 1 to 28 pages only. He suspected that the remaining pages of the charge-sheet and the CDs are missing and therefore, filed Writ Petition No.4060 of 2014 making grievance about the part of the order under which 2 accused are discharged. Similarly, the accused whose application for discharge is rejected, filed Writ Petition No.4735 of 2014. Both these Writ Petitions are pending in this Court. At the time of hearing of these Writ Petitions, an issue was raised regarding the incomplete charge-sheet, progress report etc. and thereafter the present petition is filed for the reliefs stated above.

5. One Mr. Kishor Hanmant Pawar, PSI attached to Nehru Nagar Police Station, has filed an affidavit dated 27/06/2017. Paragraph nos.4, 5 and 6 of the said affidavit read as follows :

“4. I say that as during course of hearing of the present Writ Petition, it was revealed that the record shows that the charge sheet containing 259 pages was submitted before the concerned Magistrate and at present in the charge sheet

there are only 28 pages available. I say that therefore PSI Kishor Pawar was appointed to verify and to take search from the record pending before the Ld. Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai and also in the police station.

5. I further submit that the appointed police officer personally took search in the record room of the Addl. Metropolitan Magistrate Court and he found that the record shows that the charge sheet is of Page No.1 to 259 which includes copy of the charge sheet, FIR, statement of the complainant, complaint / application of the complainant with annexures, statements of the witnesses, arrest panchanamas and documents from the ICICI Bank. The photo copy of the entire set was taken by the said officer and it was numbered as Pg.No.01 to 118.

6. I further say that as far as 4 CDS are concerned, there is an affidavit filed by the then Investigating Officer in Cri W.P.No.4735/2014 with Cri W.P.No.4060/2014 that he had incorporated the 4 CDS supplied by the complainant as part of charge sheet, while filing the charge sheet before the Ld. Trial Court. Today after verification, I say that those 4 CDS are not available in the record room of the Ld. Addl. Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai as well as in the Vikhroli Police Station which were submitted by the complainant in C.R.No.224/2010.”

6. The affidavit of the above police officer reveals that out of 259 pages, only 118 pages are available (learned APP submits that *'the figure 118 is the typographical mistake and as a matter fact, only 117 pages are available'*) and the remaining pages and 4 CDs are missing.

7. Mr. Kadam has tendered in the Court, the synopsis of documents / evidence submitted to the police / prosecution by the petitioner, reference of which is made in the petition at pages 150 to 158. The synopsis of documents / evidence are taken on record and marked Exh.'X' for identification. Mr. Kadam, thus, submits that the documents which are missing, are referred in the case-diary nos.1 to 6. The original of the subject CDs are also with the petitioner. He submits that the petitioner may be permitted to produce those documents and CDs before the Investigating Officer so as to complete the record.

8. The learned APP has no objection to adopt the course of action suggested by Mr. Kadam. Mr. Solkar, on instructions, opposed the same. He submits that in exercise of the powers under Section 173(8) of the Cr.P.C., the petitioner cannot be allowed to produce the original CDs. So far as production of rest of the is concerned, he has no objection.

9. Mr. Solkar's objection to production of the original CDs is merely on the ground that the same were not produced at the time of

filing of the charge-sheet. We, however, do not find any reason why it cannot be produced at this stage in further investigation, under Section 173(8) of the Cr.P.C. The accused, in any case, is entitled to be heard at the time of the trial of the said case.

10. In the light of the above, we dispose off the Writ Petition by passing the following order :

- i) The Nehru Nagar Police Station is directed to carry further investigation under Section 173(8) of the Cr.P.C. in the subject FIR, namely C.R.No.224 of 2010.
- ii) Further investigation would be restricted to production of the missing documents which are referred in case diary nos.1 to 6 and the original CDs.
- iii) Nehru Nagar Police Station shall complete the further investigation expeditiously and file supplementary report before the concerned Court.
- iv) Objection to the admissibility of the CDs would be decided at the time of trial.

11. In view of disposal of the Writ Petition, Criminal Application No.32 of 2017 does not survive and the same is also disposed off.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)