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WP- 404-2017 (SR.903)

Wednesday, 27.9.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 404 OF 2017

Abu Sufiyan R. Shaikh

....Petitioner

V/s.

The State of Maharashtra
and Ors.

....Respondents

* * * * *

Mr. B.P. Pandey i/by. Mr. Shishir Pandey, Advocate for
the petitioner.

Mr. J.P. Yagnik, APP for respondent, State.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

27TH SEPTEMBER, 2017.

P.C. :-

1. By the above petition, the petitioner seeks a

direction that the investigation be transferred from Gamdevi Police Station to some other police station with a direction to re-investigate the matter. The petitioner had filed an application under Section 156 (3) of the Criminal Procedure Code before the Learned Additional Chief Metropolitan Magistrate, Girgaon, Mumbai. On the said application, the Learned Metropolitan Magistrate was pleased to pass an order directing the Senior Inspector of Police, Gamdevi Police Station, Mumbai to investigate the matter and file a report. The Gamdevi Police Station accordingly registered MECR No. 5 of 2010 against six accused i.e. respondents no.2 to 7 to the above petition. After investigating the matter, the Investigation Officer has filed a chargesheet sometime in March, 2011 only against respondents no.5, 6 and 7 herein. The petitioner filed a protest petition on 12th February, 2013 alleging improper investigation and filing an improper chargesheet. The grievance of the petitioner was that, the respondents no.2, 3 and 4 were not

arraigned as accused. The protest petition filed by the petitioner came to be allowed by the Additional Chief Metropolitan Magistrate who passed an order dated 9th January, 2014 and was pleased to direct further investigation. Pursuant thereto, the further investigation was carried out and a supplementary chargesheet was filed on 20th October, 2014. In the said chargesheet also, the respondents no.2, 3 and 4 are not shown as accused. It is aggrieved by the said fact, that the petitioner has filed the instant petition for the investigation to be transferred to some other agency. It is required to be noted that, the first chargesheet was filed in March, 2011. Thereafter, the supplementary chargesheet was filed on 20th October, 2014. As indicated above, the principle grievance of the petitioner was that, the respondents no.2, 3 and 4 herein, who are the builders, have not been arraigned as accused. As indicated above, it is on the said basis that the transfer of investigation is sought. We are unable to accede to the said request of the petitioner

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having regard to Section 319 of the Criminal Procedure Code. Under the said provision, the Learned Metropolitan Magistrate has undoubtedly the powers to implead other persons as accused, if so warranted. In that view of the matter, no relief can be granted to the petitioner in the above petition. The Writ Petition is accordingly dismissed.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)