

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

CRIMINAL WRIT PETITION NO. 505 OF 2016

Mayur Ganpat Narkar. ... Petitioner.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Ganesh Bhujbal, advocate for Petitioner.
Mr. Amrendra Mishra, advocate for respondent No. 2.
Mr. V.V. Gangurde, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 28, 2017

P.C.:

1 Heard the learned Counsel for petitioner and the learned Counsel for the respondent No. 2.

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

3 The Petitioner herein is an accused in Session Case No. 250 of 2014 pending before the Sessions Court at Mumbai. Being aggrieved

by the order dated 3/12/2015, thereby allowing the application filed by the original complainant and further investigation is directed, the Petitioner has approached this Court.

4 The complainant filed an application seeking directions under section 173(8) of the Code of Criminal Procedure, 1973 after the case was committed to the Court of Sessions. It is pertinent to note that the prosecution had contested the said application and had filed their say accordingly. It is pertinent to note that the accused had also participated in the said proceedings and the accused was permitted to file reply. The learned Sessions Judge has taken into consideration all the contentions raised by the original complainant. It is pertinent to note that the original complainant at that stage had not filed any application under section 301 of the Code of Criminal Procedure, 1973 seeking permission to assist the prosecution at the time of trial. The learned Sessions Court considered the Judgment of Gujrat High Court in the case of **Sarlaben Virsing Bamaniya v/s. State of Gujarat reported in 1989 Cr. L.J.. 1211** and had exercised the

powers by observing that when Court comes to the conclusion that there are lacunas in the investigation, every court has power to direct further investigation.

5 It is surprising that the learned Sessions Court had issued notice to the accused and had heard the accused. In fact, the accused would have no locus to contest any application under section 173(8) of the Code of Criminal Procedure, 1973. Learned Sessions Court has not considered the issue as to whether an application filed by the original complainant and contested by the investigating agency could be maintainable. In any case, even if there is direction for further investigation, it would have to be conducted by the investigating agency and the complainant cannot carry out an investigation. In view of this, it would be futile to direct further investigation.

6 At this stage, both the advocates are unable to make a submission as to whether supplementary charge-sheet has been filed. In view of this, this Court is of the opinion that the impugned order

dated 3/12/2015 deserves to be quashed and set aside. However, it would have no effect if supplementary charge-sheet is already filed. In any case, Sessions Case is of the year 2014 and at the stage of framing of charge, the complainant had filed an application seeking direction under section 173(8) of the Code of Criminal Procedure, 1973. However, in the absence of further investigation, the learned Sessions Judge may exercise power as contemplated under section 173(8) of the Code of Criminal Procedure, 1973 for proper administration of justice.

7 Rule is made absolute in the above terms and the Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)