

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 558 OF 2017

Ishwar Prasad G. Khandelwal ...	...	Petitioner
Vs.		
The State of Maharashtra ...	...	Respondent

Mr.Khush I. Khandelwal i/b. Khandelwal Associates,Advocate for the petitioner
Mr.S.R.Agarkar,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 4th April, 2017.

P.C.

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

2. The petitioner herein is original complainant of Crime No.147 of 2014 registered at Marine Drive Police Station against unknown person for the offence punishable under Section 379 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3. The petitioner has alleged that on 31.10.2014, the petitioner and his son had been to Wankhede Stadium to witness the oath ceremony of the Chief Minister of the State of Maharashtra and at that time his cellphone was stolen. The investigation is completed and charge-sheet is filed against Hasan Rais Kureshi and Rizwan Shaikh @ Rijju Rafik. After filing of the

charge-sheet, the petitioner has filed an application in his personal capacity on 3.12.2016 before the Addl. Chief Metropolitan Magistrate, 8th Esplanade Court, Mumbai, seeking further investigation under Section 173 sub-clause (8) of Cr.P.C.

4. The learned Magistrate had perused the application and on 3.12.2016, has passed the following order :-

“Call say of the accused”.

5. The learned counsel for the petitioner submits that in fact, at the stage of 173(8), it is not necessary to hear the accused as the issue is between the court and the investigating agency. It is submitted that the accused has no locus and therefore, it is prayed that the order calling say of the accused be quashed and set aside.

6. It is pertinent to note that in the present case, charge-sheet is filed by the State. However, the application seeking further investigation under Section 173(8) is filed by the complainant. The complainant/petitioner has no locus to file the said application. However, the learned Magistrate has allowed the original complainant to file the said application and has called for say of the accused. It is an admitted position of law that the accused can have no say in any steps taken by the investigating agency and it is the prerogative of the investigating agency.

In fact, the application ought to have been filed through the prosecution. It appears that in all probabilities only because it was filed by private person, the learned Magistrate has called say of the accused which, in fact, is not necessary.

7. The order passed by the learned Magistrate dated 3.12.2016 calling say of the accused is hereby quashed and set aside. The learned Magistrate shall decide the said application filed by the original complainant seeking further investigation under Section 173(8) of Cr.P.C. on its own merits in accordance with law. Rule is made absolute in the above terms and the Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)