

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

CRIMINAL APPLICATION NO. 279 OF 2017

Smt. Niki Nakul Gupta.	... Applicant.
Versus	
The State of Maharashtra & anr.	... Respondents.

Mr. A.P. Mundargi, Sr. Counsel a/w. Mr. Prashant Badole, advocate
for Applicant.

Mr. S.R. Agarkar, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 12, 2017**

P.C.:

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

2 Being aggrieved by the order dated 17/1/2017 passed by the
Metropolitan Magistrate 17th Court, Borivali, Mumbai in C.C. No.
222/SW/2015, the applicant who happens to be original complainant

has approached this Court . The order passed by the Magistrate is as follows :

“Ld. APP absent in 1st Sessions. Ld. APP present in 2nd Session.

Informant present with Adv. in 1st Session.

Accused Jagmohan present with Advocate.

Other Accused absent No. 1 to 4 Adv. present.

Ex.12 Exemption Application filed – granted.

V.P. filed by Adv. for Informant- filed.

Application for seeking permission to assist the prosecution.

Heard allowed in view of No objection of Ld. APP.

Application u/s. 173(8) of Cr. P.C. for further investigation.

-call reply of accused.

Adj. to 19/5/2017.”

3 It appears that the applicant had filed an application under section 301 of the Code of Criminal Procedure, 1973 seeking to assist the prosecution. The said application was allowed by the learned Magistrate as the learned APP had no objection. It was the contention

of the complainant that she had made specific allegation against original accused No. 7 Ms. Sukhwinder Kaur alias Radhe Maa. That the proceedings against the original accused No. 7 were dropped despite there being an allegation that she had assaulted the complainant.

4 The learned Senior Counsel submits that the investigating agency had not filed any report under section 169 of the Code of Criminal Procedure, 1973 nor had given any notice to the complainant that the criminal proceedings against the original accused No. 7 were to be dropped and therefore, she could not assist the investigating agency to conduct a fair investigation. The complainant had filed an application under section 173(8) of the Code of Criminal Procedure, 1973 before the learned Magistrate. The learned Magistrate has committed a grave error by issuing notice to the accused and calling for their reply as it is a settled position of law

that the accused would have no locus nor say in the process of investigation.

5 It is seen that the applications were filed by the complainant in her personal capacity. The learned Magistrate ought to have called a say from the prosecution and not from the accused. The learned Magistrate has not called any say from the prosecution. In fact, this Court is of the opinion that it was the power of the investigating agency to seek further investigation under section 173(8) of the Code of Criminal Procedure, 1973.

6 The learned APP upon instructions from the investigating officer submits that the Investigating Officer has conducted the investigation in a fair manner.

7 It appears that the complainant is not satisfied with the steps taken by the investigating agency. In these circumstances and in the

peculiar facts of the case, this Court is of the opinion that the Investigating Officer shall call the complainant and record her statement. She is permitted to demonstrate as to what are the lacunas in the earlier investigation and that the charge-sheet is not filed in pursuance to the allegations made by her. In the eventuality that the Investigating Officer records the statement and if any further instances are brought to the notice of the Investigating Officer, he shall file an application under section 173(8) before the learned Magistrate which shall be presented through the prosecution. The learned Magistrate may upon considering the contention in the application decide the same in accordance with law. The supplementary statement recorded of the complainant pursuant to this order shall be placed alongwith the application under section 173(8) of the Code of Criminal Procedure, 1973.

8 The learned Senior Counsel upon instructions from the complainant, who is present in the court, submits that the

complainant would appear before the Investigating Officer on 20th April, 2017. The Investigating Officer may record her statement without prejudice to her rights and submit the same alongwith his application under section 173(8) of the Code of Criminal Procedure, 1973.

9 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)