

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1895 OF 2016

Dinayar Jal Bharucha

....Petitioner

Vs.

Pervin Phiroz Variava and another

... Respondents

Mr. Vishal Ingawale Advocate for Petitioner

Respondent no. 1 present in person

Ms. Neeta Jain APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 24th APRIL, 2017.

P.C.

1) Heard.

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

3) Petitioner herein was shown as an accused in C.C. No. 2585/SW/2003 (18/Misc/1994). The learned Magistrate upon perusing the complaint had passed an order and called for report under section 202 of Code of Criminal Procedure, 1973. The police had filed a report stating therein that no case is

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made out. The learned Magistrate was therefore, constrained to hear the matter on merits and the learned Magistrate had recorded a finding that *prima facie* case is made out against the accused under section 420 of the Indian Penal Code. The complainant was directed to lead evidence before charge. Accordingly, she had lead the evidence before charge. She was also cross-examined by the defence counsel and thereafter, the learned Magistrate had heard both parties on the merits of the matter. The learned Magistrate upon considering the merits of the matter had dismissed the complaint by an order dated 28/02/2013.

4) Being aggrieved by the said order, the respondent herein had filed Revision Application before the Sessions Court bearing Criminal Revision Application No. 565 of 2013. The learned Sessions Court, after hearing both sides, had arrived at a conclusion that the order passed by the learned Magistrate was illegal in the facts of the given case and therefore had allowed the Revision Application by setting aside the order dated 28/02/2013. The learned Magistrate was directed to frame charge against the respondent for offence punishable under section 420 of the Indian Penal Code.

5) Being aggrieved by the order passed by the Revisional Court dated 31/03/2016, petitioners have approached this Court by filing present petition. This Court had heard the matter on 14/06/2016 and issued notice to respondent no. 1. Notice was made returnable on 26/07/2016. It appears that spare copy was filed on 22/07/2016 and hence, report of service had to be awaited. Matter has not reached the stage of hearing. This Court had passed an order that pendency of this petition shall not be construed as a stay to the order dated 31/03/2017 passed in Criminal Revision Application No. 565 of 2013. The prayer in the present petition is for quashing and setting aside the order dated 31/03/2016.

6) It is pertinent to note that on 30/03/2017, the learned Additional Chief Metropolitan Magistrate, 4th Court, Girgaon has been pleased to frame charge against petitioner under section 420 of the Indian Penal Code. The trial has commenced with framing of charge. The order dated 31/03/2016 has taken effect and pursuant to the order passed by the Revisional Court, charge is framed against the accused.

7) In view of this, it would not be appropriate to stay the order passed by the Revisional Court. The Additional Chief Metropolitan Magistrate is hereby requested to make an endeavour to conclude the recording of evidence as far as possible within 9 months from today as the only material witness to be examined would be respondent herself.

8) With these observations, Writ petition stands dismissed.

9) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)