

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

CRIMINAL APPLICATION NO.712 OF 2016

Ganpat Shivkaran Khorwal .. Applicant.

Vs.

The State of Maharashtra & Ors. .. Respondents.

Dr.Nilesh Pawaskar i/b Sangeeta Pawaskar for the Applicant.

Mr.Vinod Chate APP for the Respondent-State.

CORAM : A. K. MENON, J.

DATED : 12TH JULY, 2017

P.C. :

1. By this application the applicant-original complainant calls into question the order dated 20th December, 2014 passed by the Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai in C.C. No.20/Misc./2012 whereby the Magistrate did not find any reason to proceed with against the accused since the dispute was reportedly of civil nature. The complaint was therefore dismissed. The order of the Magistrate impugned in the present application is result of C.R.No.109/2004 filed before the Court of Sessions wherein by the order dated 25th January, 2010. The Sessions Court while disposing of the revision observed that the Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai shall make necessary inquiry into the case and pass necessary order. According to him the procedure adopted in having referred the matter to police is incorrect. The Magistrate was duty bound to carry out

the inquiry himself. He therefore takes exception to the said order and states that it is error apparent on the face of the order and therefore seeks order issuing process.

2. The application is also opposed on behalf of the State by the learned APP. I have heard counsel for the parties. This is the second time that this complaint was under consideration for further investigation. Since the original complainant suffered dismissal of his complaint against which revision application No.1038 of 2003 came to be filed. This is how in the second round the Magistrate Court recorded satisfaction. I find that the order of the Magistrate indicates that he has exercised discretion under Section 202 Code of the Criminal Procedure where under the option of carrying out inquiry himself or directing the investigation by the police was within his discretion in order to decide whether or not it has sufficient ground for proceeding with the instant case. In the circumstances there is no reason to interfere with this order. The Application is rejected.

(A.K. MENON, J.)