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\* 1/19 \*      Appln-293-2017  
19<sup>th</sup> December, 2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 293 OF 2017  
IN  
CRIMINAL WRIT PETITION NO. 3680 OF 2016

Riten Devindher Ghai

....Applicant/  
Petitioner

V/s.

State of Maharashtra and anr.

...Respondents

\* \* \* \*

Mr. Amit Desai, Senior Advocate with Mr. Kunal Dalal  
i/by. Pillai & Co., Advocate for the applicant, petitioner.

Mrs. Aruna S. Pai, APP for the State.

Mr. A.H.H. Ponda a/w. Mr. Ashish Raghuvanshi, Advocate  
for respondent no.6.

CORAM :-

RANJIT MORE, &

SANDEEP K. SHINDE, JJ.

ORDER RESERVED ON :- 6<sup>th</sup> DECEMBER, 2017

ORDER PRONOUNCED ON :- 19TH DECEMBER, 2017.

P.C. (Per :- Sandeep K. Shinde, J)

1.            This Miscellaneous Application is preferred in

the disposed off petition by the original petitioner and prayed for the following reliefs :-

(a) That this Hon'ble Court be pleased to issue appropriate directions and order to Respondents no.2 to 5 or such other investigating Agency to file the same documents as filed in C.R. No. 93 of 2016 in C.R. No. 129 of 2016 also as both the FIR's relate to the same incident.

(b) Pending the hearing and final disposal of this Application issue such appropriate directions to respondent Nos.2 to 5 or to such other Investigating Agency from time to time to monitor and/or facilitate their Investigation as this Hon'ble Court may deem fit and proper.

(c) Pending the hearing and final disposal of this Application the proceedings before the Ld. Additional Chief Metropolitan Magistrate, 9<sup>th</sup> Court, Bandra, Mumbai in C.R. No. 129 of 2016 be stayed;

(d) That this Hon'ble Court in view of the addition of section 326 of the IPC in C.C. No. 1136/PW/2016 as the charges are non-bailable

may direct respondent no.6 to 8 to be taken into custody.

(e)That this Hon'ble Court may be pleased to direct the Investigating Officer and/or Respondent no.2 to 5 to obtain the mobile call records of Respondent Nos.6 to 8 from 01.02.2016 to 31.03.2016 and file it as additional evidence.

(f)for such consequential reliefs as may be required in the above case.”

2.            Heard Learned Counsel for the applicant, learned APP for the State and Learned Counsel for the other respondents.

3.            The following questions do arise for our consideration :-

(i)    Whether the applicant-accused could have prayed for reliefs, in the nature of substantial rights in the disposed off petition ?

(ii)    Whether the applicant, accused in Crime No. 129 of 2016 has right to seek a direction to the

Investigating Agency to file certain documents as filed in Crime No. 93 of 2016 as both the FIRs relate to the same incident ?

4.            Before answering the questions, the facts essential for deciding this application are as under :-

.            It is the applicant's case that on 23<sup>rd</sup> February, 2016, respondent no.6 with the assistance of respondents no.7 and 8 assaulted him, firstly by hand and thereafter with a bamboo in the building lobby and resultantly suffered grievous external and internal injuries. The petitioner's complaint was registered on the same night vide C.R. No. 93 of 2016 under Sections 324, 504, 506 and Section 34 of the Indian Penal Code. The alleged incident happened in the building premises of the building lobby of the ground floor near the building lift where the society building had installed a CCTV camera actively monitoring the lobby area. The respondent no.6 had also lodged a complaint with the police against the present applicant, which was registered as Crime No. 129 of 2016 under Sections 324m 504, 506 and Section 34 of the

Indian Penal Code. The chargesheet in both the crimes has been filed.

5.           The applicant herein had preferred a Writ Petition No. 3680 of 2016 and sought directions to the respondent, Investigating Agency for further investigation to collect and produce all material evidence which has remained to be collected. In terms, the applicant had claimed the following reliefs in Writ Petition No. 3680 of 2016;

“a)That this Hon'ble Court be pleased to issue appropriate directions and orders to the Respondent Nos.2 to 5 or such other Investigating Agency for further investigation to collect and produce all material evidence which has remained to be collected and/or produced and further take such corrective steps to ensure that the Respondent Nos.6 to 8 are arrested and prosecuted for the aggravated disclosed offences in respect of F.I.R. being C.R. No. 93/2016 dated 24-02-2016 and Charge-sheet bearing Cr.Case No. 1136/PW/2016 before the Ld. Addl. Chief Metropolitan Magistrate, 9<sup>th</sup> Court, Bandra,

Mumbai.” (emphasis supplied)

6.            The said petition was heard and disposed off by order dated 19<sup>th</sup> December, 2016. Para-2 of the said order refers to a statement made by the Learned APP. It shows, she had made a statement that, in respect of the said incident in question, cross FIRs are filed namely, C.R. No. 93 of 2016 and C.R. No. 129 of 2016 and further stated that, investigation in both the C.R.s is complete and chargesheet has been filed before the concerned Magistrate. The Learned APP, had also stated that, further investigation under Section 173(8) of the Code of Criminal Procedure was going on in all aspects and all aspects would be taken into consideration including subsequent medical reports and appropriate action would be taken.

7.            On this assurance, the Division Bench disposed off the petition by observing thus, “We hope and trust the Investigation Officer would file all relevant documents before the Magistrate with the report of further investigation”.

8. It may be stated, the writ petition was filed by the petitioner seeking directions to the Investigating Agency to file a complete chargesheet for further investigation and to collect and produce all material evidence in Crime No. 93 of 2016 (emphasis supplied) corresponding to Criminal Case No. 1136/PW/2016.

9. The statement made by the Learned APP came to be recorded in para-2 of the order dated 19<sup>th</sup> December, 2016 relates to further investigation in Crime No. 93 of 2016 and not Crime No. 129 of 2016. We see no quarrel on this issue (emphasis supplied), though disputed by applicant.

10. The applicant herein, thereafter filed Criminal Application No. 504 of 2016 and claimed following relief :-

“that this Hon'ble Court be pleased to issue appropriate directions and orders to Respondent No.2 to 5 or such other investigating agency for further investigation to collect and produce all material evidence which has remained to be collected and/or produced and further take such

corrective steps to ensure that Respondent No.6 to 8 are arrested and prosecuted for the aggravated disclosed offences in respect of FIR being C.R. No.93/16 dated 24-02-2016 and charge-sheet bearing Cr. Case No.1136/PW/2016 before the ld. Addl. Chief Metropolitan Magistrate, 9<sup>th</sup> Court, Bandra, Mumbai.” [emphasis supplied]

.            It may be stated that, the relief prayed in Writ Petition No. 3680 of 2016 and the relief in Application No. 504 of 2016 was similar in nature.

11.            The said application was disposed off by order dated 17<sup>th</sup> April, 2017. We reproduce para-4 of the said order :-

“4.    Learned APP on instructions now makes a statement that medical papers annexed with the said petition were forwarded to the JJ Hospital and opinion was sought, which is now received. She also submitted that investigating agency has sent CCTV footage to Cyber Forensic Lab and their opinion was also sought, and the report is already received. Considering these reports, she states that investigating agency has added section 326 of IPC in CR No. 93 of

2016 [CC No. 1136/PW/2016 pending on the file of 9<sup>th</sup> Additional Metropolitan Magistrate, Bandra]. She states that the supplementary charge-sheet would be filed in the said CR within a period of one week alongwith the medical papers, report received from JJ Hospital as well as CCTV footage alongwith report of the forensic lab. Statements are accepted.”

12.           It could thus be seen from para-4, a statement was made by the Learned APP, on instructions that, “the supplementary chargesheet would be filed in the said CR” (emphasis supplied) within a period of one week alongwith the medical papers, report received from J.J. Hospital, as well as, the CCTV footage alongwith the report of the Forensic Laboratory.” The “said CR” relates to Crime No. 93 of 2016 as was prayed by the applicant in the said Criminal Application No. 504 of 2016, and not in Crime No.129 of 2016.

13.           In view of the facts aforesaid and as a matter of record, we hold that, Writ Petition No. 3680 of 2016 and

Criminal Application No. 504 of 2016 were filed by the applicant seeking further investigation in Crime No. 93 of 2016 wherein he was the complainant . As a corollary, we hold, applicant did not seek reliefs for further investigation in Crime No. 129 of 2016.

14.           It may be stated that, Crime No. 93 of 2016 and Crime No. 129 of 2016 are arising out of the same incident and therefore the cross cases. Admittedly, the supplementary chargesheet has been filed in Crime No. 93 of 2016 wherein CCTV footage of the incident, medical reports and opinion were filed by submitting the supplementary chargesheet. Thus, such a CCTV footage and the medical reports are not forming a part of the chargesheet in Crime No. 93 of 2016. The applicant in his prayer, seeks a direction to the Investigating Agency to file CCTV footage, medical reports and opinions in Crime No. 129 of 2016 as are filed in Crime No. 93 of 2016.

15.           The Learned Counsel for the petitioner would urge that, since both the crimes are arising out of the same incident, it would be unfair, if such additional

documents in the form of CCTV footage and medical reports (hereinafter referred to as “the said documents” for short), if not filed in Crime No. 129 of 2016 wherein the applicant is accused.

16. We have perused the subject application. At the outset, it may be stated that, this is a second Miscellaneous Application filed by the applicant in a disposed off petition. The applicants, would therefore, assert, that the cross-complaints since arising out of the same incident, the Investigating Agency could not have preferred to file the additional chargesheet in one crime and leaving another as it is, which on the face of it, amounts to unfair investigation. We will deal with this contention in the later part of the order.

17. The Learned APP, has taken us through the averments made in the said application, as well as, the grounds urged therein. Besides, the allegation of omission, much less deliberate, on the part of the Investigating Officer, in ground no.7 and onwards, the applicant has taken recourse to and relied on the

statements made by the Learned APP on 19<sup>th</sup> December, 2016 and again on 17<sup>th</sup> April, 2017. In para-12, the applicant asserted, though the Investigating Officer through Learned APP assured this Court that, he would file the 'said additional' documents in C.R. No. 129 of 2016 but since omitted to do so, has caused a grave prejudice to him. On this premise, the applicant is seeking the relief in the form of directions to the Investigating Officer to file the, said additional documents in Crime No. 129 of 2016.

18.        We have already concluded that, neither in order dated 19<sup>th</sup> December, 2016 in Writ Petition No. 3680 of 2016, nor in order dated 17<sup>th</sup> April, 2017 passed in Criminal Application No. 504 of 2016, there was any assurance by the State to file the said additional documents in Crime No. 129 of 2016. It is also noticeable that, neither in Writ Petition No. 3680 of 2016, nor in Criminal Application No. 504 of 2016, the petitioner has had sought directions to file subject additional documents also in Crime No. 129 of 2016. We thus find the ground on which the applicant would assert his rights in the said

application are factually incorrect.

19.            It is settled law that, once the charge-sheet is filed in the competent Court after completion of the investigation, the process of monitoring the investigation into the offence comes to an end. In case of **Sushil Kumar Mody V/s. Union of India, reported in (1998) 8 SCC page 661**. It is held by the Apex Court that, once the charge-sheet is filed, it is only the Court in which the charge-sheet is filed, which has to deal with all matters relating to trial of the accused, including the matters falling within the scope of Section 173(8) of the Criminal Procedure Code. It is therefore, to be seen that, once the charge-sheet is filed, the concerned Court would be Court of competent jurisdiction to deal with all matters relating to trial including one under Section 173(8) of the Criminal Procedure Code. Thus, in view of this decision in law, we are of the view that, the subject application could not have been filed once the charge-sheet has been filed in the concerned Court.

20.            The question now arises, as to whether the

Learned Judge, while deciding a particular case can rely upon the evidence recorded in another case, though the same was arising from the same incident.

21.            Mr. Ponda, the Learned Counsel appearing for the contesting respondent, has submitted that the Apex Court in the case of **Nathilal and Others V/s. State of Uttar Pradesh and another reported in 1990 (Supp) Supreme Court Cases 145**, has explained the procedure for conducting the two cases (cross-cases) arising out of the same incident. In para-2, in the said case, it has been held,

“2. ....After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be

looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

. It is therefore to be understood, in cross-cases, the same Learned Judge is required to dispose off the matter by two separate judgments and while deciding each of the cases, he can only rely on the evidence recorded in that particular case. That as such, the evidence recorded in the cross-cases, cannot be looked into.

22. Mr. Ponda, the Learned Counsel appearing for the respondents, has made following submissions :-

(i)that the applicant vide this application, is indirectly seeking to alter, amend, add “the record of cases” in terms of Section 209(c) of Cr.P.C.

(ii)that, if the application is allowed and if this

Court directs the Investigation Officer to add the said additional documents as a part of the charge-sheet, it would set a wrong precedence and it would also be contrary to the scheme of the Code.

(iii)that the applicant is accused in C.R. No. 129 of 2016 cannot seek directions to the Investigation Officer to place the said additional documents in the charge-sheet filed in C.R. No. 129 of 2016, for want of any rights.

23. In support of his contention, Mr. Ponda, has firstly relied on the judgment in the case of **State of Orissa V/s. Debendra Nath Padhi, reported in (2005) 1 Supreme Court Cases 568** and another **Rukmini Narvekar V/s. Vijaya Saterdekar and Others, reported in (2008) 14 Supreme Court Cases page 1.**

. In the case of *Debendra Nath Padhi* (supra), the issue was whether, at the stage of framing of charge, roving or fishing enquiry is permissible and whether accused can adduce his defence at the stage of framing of

charge.

.            It was held that, at the stage of framing of charge, hearing of submissions of the accused has to be confined to the “material produced by the police”. In other words, the accused can seek discharge on the basis of the documents produced alongwith the charge-sheet.

24.           Mr. Ponda, has taken us through the observations in paras-20 and 21 of *Debendranath Padhi's* judgment and submitted that, except in rare cases, the High Court in exercise of jurisdiction under Section 482 Cr.P.C. may consider the documents at the instance of the accused with a rider that, such documents must be in the nature of unimpeachable evidence of a sterling quality.

25.           Mr. Ponda, therefore would submit that, the applicant, accused cannot seek the relief in the nature of directions as sought for want of rights or otherwise. Mr. Ponda, however, fairly concedes that, the applicant may adopt appropriate proceedings and seek appropriate reliefs but not in the manner in which they are sought in the present application.

26.            Mr. Desai, submitted that, if the power of investigation has been exercised by the police officer malafidely, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. In support of his submissions, he has relied on the judgment of the Apex Court in the case of **S.N. Sharma V/s. Bipen Kumar Tiwari and Others, reported in AIR 1970 SC page 786.**

.            We do not find this authority is of any assistance to the applicant. In our opinion and view, the foundation of application is on the “so called assurance” given by the Investigation Officer as then claimed therein. It appears, since the Investigation Officer did not file the additional documents in Crime No.129 of 2016, attempt is made to draw inference that Investigation Officer has exercised the powers malafidely. We have, already concluded that, the applicant's claim in the petition and in the first application was concerning Crime No. 93 of 2016 and not in Crime No. 129 of 2016. We therefore, disagree with these submissions of Mr. Desai.

27. We, therefore, hold that even if the two crimes are registered arising out of the same incident, the two cases arising therefrom have independent existence and evidence led in one of such cases, cannot be read into another cross-case. No doubt, the applicant being accused, has a right to seek fair investigation and a fair trial but certainly, he cannot seek directions from this Court to the Investigation Officer for adding the “said additional documents” in the charge-sheet already filed in C.R. No. 129 of 2016. The applicant is at liberty to adopt appropriate proceedings for redressal of his grievance, if any. However, for the reasons stated hereinabove, we are not inclined to entertain this application and as such the same is dismissed.

(SANDEEP K. SHINDE, J)

(RANJIT MORE, J)