

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2989 OF 2014

Sarala Sopan Thorat

.....Petitioner

V/s.

1. M/s. Bhima Shankar Sahakari
Sakhar Karkhana Ltd. and Ors.

.....Respondents

* * * * *

Mr. Uday Warunjikar i/by. Ms. Aarti P. Bhide, Advocate for the petitioner.

Mr. T.D. Deshmukh, Advocate for respondents no.2 to 6 and 8.

Ms. Pallavi Dabholkar, APP for State.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 5TH JANUARY, 2017.

P.C. :-

1). This petition challenges the order dated 8th May, 2014 passed by the trial Court on the petitioner's application at Exhibit-7 in Criminal Misc. Application No. 9 of 2013.

2). The brief facts leading to the present petition are that, the petitioner has filed complaint against respondents no.1 to 8 for the offences punishable under Sections 426, 427, 430, 403, 107 read

with Section 34 Indian Penal Code. The trial Court, by order dated 2nd February, 2013, after perusing the complaint and the documents filed by the petitioner and on hearing the Advocate for the petitioner, expressed its, *prima-facie* satisfaction as regards the allegations made in the complaint. However, thereafter, instead of following the procedure under Section 200 Criminal Procedure Code ("Cr.P.C." for short), he passed an order of investigation under Section 156(3) Cr.P.C.. Only one of the accused persons i.e. respondent no.2 challenged the order by filing Criminal Revision Application No. 126 of 2013 in the Court of Sessions. By the order dated 13th October, 2013 the Revision Application was allowed by the Sessions Court with clear observations that since the trial Court had already taken cognizance of the complaint, it could not have relegated the complaint to a pre-cognizance stage by directing investigation under Section 156 (3) Cr.P.C. With this finding, the Revisional Court returned the records and proceedings to the trial Court for dealing with the complaint in accordance with law.

3). Thereafter, instead of proceeding with the complaint, in accordance with law, the petitioner filed the application at Exhibit-7 seeking investigation into the offence under Section 156(3) Cr.P.C. as against the remaining accused and issuance of warrant against respondent no.2 for securing his presence in the Court. The trial Court, by the impugned order, has dismissed the application holding that since the Revisional Court has set aside the order of investigation under Section 156(3) Cr.P.C., there is no question of continuing with the same against the other accused persons. As

regards the second prayer, the same was rejected with an observation that, the petitioner has not examined herself under the provisions of Section 200 Cr.P.C. Consequently, no order of issuance of process has been passed. Therefore, neither the summons nor the warrant can be issued against respondent no.2.

4). Mr. Warunjikar, the learned Advocate appearing for the petitioner submits that, since the order of direction of investigation under Section 156(3) Cr.P.C. was challenged by only one of the accused persons i.e. respondent no.2 herein, it must be deemed that the other accused persons had accepted the order. Therefore, according to him, the trial Court ought to have given directions for investigation against the remaining accused persons. The argument cannot be accepted for obvious reason that, in the facts of the case, the order of direction for investigation under Section 156(3) Cr.P.C. was a illegal order and absolutely unsustainable in law. Hence, it must be held to have been set aside in its entirety and not just against respondent no.2. Therefore, the view taken by the trial Court is the correct view. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)