

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

CRIMINAL APPLICATION NO. 790 OF 2017

Deepak Mirchandani

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Rahul Moghe for the applicant.

Mr. N. B. Patil, APP for the respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd AUGUST, 2017.

P.C. :

1. The petitioner is the original complainant. The complaint is filed before the trial Court for an offence under sections 341, 352, 395, 402, 453, 454, 455, 506(II) read with 120B of IPC.

2. The trial Court by order dated 7th October, 2016, directed the case be sent for investigation and report under section 202 of Cr. P.C. The complaint was thereafter sent for the investigation and report. The report was received by the trial Court. It is submitted that the complainant thereafter pointed out to the trial Court that the order directing investigation and report under section 202 of Cr.P.C. ought not to have passed without recording the verification statement of the complainant. The trial Court therefore passed order dated 5th May,

2017 directing that the case be adjourned for recording verification.

3. Learned advocate for the petitioner submitted that the infirmity in order dated 7th October, 2016 was pointed out by the petitioner / complainant to avoid further irregularities. It is submitted that in view of the aforesaid circumstances, orders dated 7th October, 2016 and 5th May, 2017 may be set aside and the trial Court be directed to hear the complaint afresh and deal with the same in accordance with law.

4. Learned advocate for the petitioner relied upon the decision of this Court in the case of *Subhash Kanade Vs. State of Maharashtra & ors. 2015 ALL MR (Cri.) 2374*.

5. In view of the aforesaid circumstances, orders dated 7th October, 2016 and 5th May, 2017 are required to be set aside. The trial Court ought not to have directed the investigation and report under Section 202 of Cr.P.C. without recording the verification statement. Hence, I pass following order;

:: ORDER ::

(i) Impugned orders dated 7th October, 2016 and 5th May, 2017

passed by the learned Metropolitan Magistrate, 12th Court, Bandra in CC/185/SW/2016 are hereby quashed and set aside.

(ii) Learned Metropolitan Magistrate, 12th Court, Bandra is directed to hear the complaint afresh and deal with the same in accordance with law.

(iii) Application stands disposed of.

[PRAKASH D. NAIK, J.]