

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

WRIT PETITION NO. 3606 OF 2016

Ashok Hiralal Chaudhari

.. Petitioner

Vs.

The State of Maharashtra & Anr.

.. Respondents

.....

Mr.B.G. Tangsali, Advocate for the Petitioner.

Ms.Rutuja Ambekar, APP for the Respondent - State.

Mr.S.R. Garud a/w. Mr.Rahul Kadu i/b.Jaykar & Partners,
Advocate for Respondent no.2.

Mr.A.B. Kate, API Lonawala city police station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 22, 2017.

P.C. :

The petitioner has challenged the order dated 10th March, 2016, passed by the J.M.F.C., Wadgaon Maval, Pune, below Application Exhibit-28 in R.C.C. No.130 of 2013 as well as the order dated 3rd October, 2016, passed by the Sessions Judge, Pune in Revision Application No.135 of 2016.

2 The petitioner is impleaded as a accused in R.C.C. No.130 of 2013, pending before the aforesaid Court. Respondent no.2 is the defacto complainant in the said proceedings. On completing the investigation, charge-sheet was filed. In pursuant

to that an application was preferred by the de-facto complainant stating that there are infirmities in evidence and further investigation under Section 173(8) of Cr.P.C. is required to be carried out in the said proceedings. The said application was allowed by the trial Court vide order dated 10th March, 2016. In pursuant to that the petitioner preferred criminal Revision Application No.135 of 2016, challenging the aforesaid order. The Revision Application was dismissed vide order dated 3rd October, 2016. During the pendency of said Revision Application, the prosecution has filed a say before the Sessions Court and had also submitted that there is necessity of further investigation which had indirectly supported the cause of respondent no.2.

2 Learned counsel for the petitioner submits that the orders passed by the learned Magistrate as well as the Sessions Court are contrary to law. The de-facto complainant has no right to prefer any application for further investigation under Section 173(8) of Cr.P.C. Reliance is placed on the decision of the Supreme Court of India in the case of **Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Ors.**¹

¹ (2017) 4 SCC 177

3 Learned counsel appearing for respondent no.2 submits that there were infirmities in the investigation and, hence, there was necessity of further investigation. Learned APP, on instructions, submitted that the investigating officer has already preferred an application for further investigation under Section 173(8) of Cr.P.C. and the said application has been allowed on 15th July, 2017. In pursuant to the said order, further investigation is in progress.

4 The point involved in the petition is whether the de-facto complainant has right to prefer an application for further investigation. In view of the observations made by the Apex Court in the aforesaid decision, particularly in paragraph no.49, it is clear that respondent no.2 could not have preferred such an application and, therefore, the orders passed by the learned Magistrate as well as the Sessions Court are required to be set aside.

5 It is noted that the prosecution has already preferred an application for further investigation, which has been allowed. That is an independent application preferred by the prosecution. However, liberty is available to the petitioner to challenge the order of further investigation without prejudice to the right of

petitioner to challenge further investigation, the same would continue unless challenged and stayed or set aside by any Court.

6 In view of the above, I pass the following order:

:: ORDER ::

- (i) The order dated 10th March, 2016 passed by the J.M.F.C. Wadgaon Maval, Pune, below Application Exhibit-28 in R.C.C. No.130 of 2013 as well as the order dated 3rd October, 2016 passed by the Additional Sessions Judge, Pune, in Criminal Revision Application No.135 of 2016 are hereby quashed and set aside;
- (ii) It is expected that the investigating machinery would conclude the investigation expeditiously. This direction is given without prejudice to the rights and contentions of the Petitioner to challenge the order of further investigation.
- (iii) Writ Petition is disposed of accordingly.

(PRAKASH D. NAIK, J.)