

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

CRIMINAL WRIT PETITION NO. 4440 OF 2015

Mr. Shyam Chandiramani & anr. ... Petitioner.

Versus

The State of Maharashtra. ... Respondent.

Mr. J.A. Udaipuri i/b. Udaipuri and Company, advocate for petitioner.

Mr. Shashank Choudhary i/b. Mr. Sachin V. Masurkar, advocate for respondent No. 2.

Ms. A.M. Malhotra, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : MARCH 29, 2017

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent No. 2.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 Being aggrieved by the order dated 27th March, 2015 rejecting
the application filed by the Petitioners below Exh. 17, the Petitioner
has approached this Court. The application below Exh. 17 was filed
by the Petitioner seeking permission to defer with the cross-
examination of P.W. 1 until and unless substantive evidence of all
other prosecution witnesses is recorded. The said application was
rejected by the impugned order dated 27th March, 2015.

4 The learned Counsel for the respondent has vehemently argued
that the order dated 27th March, 2015 is justified. It primarily appears
that the Court had also observed that the preliminary issue before the
Court was as to which of the parties was in possession of the said
property. A query was made as to whether the proceedings under
section 145 of the Code of Criminal Procedure, 1973 were filed before
taking over the possession by the Petitioner or after taking over the
possession. The learned Counsel for the petitioners submits that the
proceeding was filed after possession was taken over. At this stage,

the learned Counsel for the Petitioner has sought liberty to challenge the maintainability of the proceeding. However, at this stage, the proceedings cannot be reverted back to square one. The learned Magistrate has observed that the respondent would be prejudice in the eventuality that the cross-examination of one witness is deferred till examination-in-chief of the second witness is recorded and hence, in the interest of justice has rejected the said application.

5 At this stage, it would not be necessary to go into the legality of the order, which was passed in proceedings under section 145 of the Code of Criminal Procedure, 1973. Suffice it to say that the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai shall conclude recording of evidence in C.C. No. 16/N/2012 within 3 months from the date of the receipt of this order without granting any unwarranted adjournments to either of the sides. It is further made clear that all contentions are kept open.

6 The petition stands disposed of with the above directions. Rule
is discharged accordingly.

7 Needless to say that the interim relief granted vide order dated
10th December, 2015 stands vacated.

8 Office to communicate this order to the concerned court
forthwith.

(SMT. SADHANA S. JADHAV,J)