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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4065 OF 2016

WITH

CRIMINAL APPLICATION NO.536 OF 2017

Hemant Jagdish Ashar

..Petitioner.

V/s.

The State of Maharashtra & Ors.

..Respondents.

AND

Vimal Jayant Soni

..Intervenor.

Mr.G.S.Godbole with Mr.Anupam Surve, Mr.Vinayak Vengurkar and
Ms.NitishaLad i/b. Mr.Sunil N.Nair for the petitioner.

Mrs.Sangeeta D.Shinde, APP for the respondent-State.

Mr.A.H.H. Ponda i/b. Mr.Ashish Raghuvanshi for the intervenor.

***CORAM: NARESH H. PATIL AND
NITIN W.SAMBRE, JJ.***

DATE : DECEMBER 13, 2017

PC:-

On a complaint filed by the petitioner, crime came to be registered vide C.R.No.206/1994 for offences punishable under section 441, 341, 506 read with 34 of the Indian Penal Code and

investigation was carried out and the first charge-sheet came to be submitted on July 31, 2015 against one accused to the Court of 5th Additional Chief Metropolitan Magistrate Court, Bhoiwada, Mumbai. The investigation was carried out by Mr.Khatawkar.

2. The petitioner-complainant filed an application for further investigation. By an order dated February 26, 2016 in C.R. No.206/2014, the Additional Chief Additional Metropolitan Magistrate allowed the application. The operative part of the order reads as under :-

“(i) Application stands allowed.

(ii) The In charge of Shivaji Park Police Station is hereby directed to conduct further investigation in C.R. No.206/2014 and considered the allegations made by informant and submit the report at the earliest.”

3. The learned counsel appearing for the petitioner-complainant contends that thereafter further investigation was carried out by Smt.Gulab Patil, the then investigating officer, attached to the concerned police station. After carrying out the further investigation she has prepared a report and thereafter, she

was transferred in the month of May, 2017. In-charge Senior PI. Mr.Sonawane and A.P.I. Mr.Sachin More were attached to the said police station at the relevant time

4. The petitioner filed certain application under Right to Information Act and in response to the same, the petitioner claimed that he received copy of the supplementary charge-sheet signed by Smt.Gulab Patil, which was provided by the senior Inspector of Police, Versova police station on September 27, 2017 and November 22, 2017. It is submitted that the said report was signed by Smt. Gulab Patil on July 31, 2017.

5. The grievance of the petitioner is that instead of submitting a report of Smt.Gulab Patil, A.P.I. Sachin More submitted a report on July 15, 2017 adding section 506(2) of the IPC to the offence under investigation.

6. The learned counsel submits that A.P.I. Mr.Sachin More, could not have submitted a report dated July 15, 2017 when in fact, Smt.Gulab Patil signed the supplementary charge-sheet on July 31, 2017. There is a reason for this grievance. According to

the petitioner, in the report signed by Smt.Gulab Patil, three more persons were shown to be accused, whereas in the report submitted by A.P.I. Sachin More, the name of the co-accused were missing or not disclosed at all.

7. Placing reliance on section 168 of the Criminal Procedure Code, learned counsel submitted that report signed by Smt.Gulab Patil must be held to be supplementary charge-sheet submitted in accordance with section 173(8) of the Criminal Procedure Code. The report submitted by Mr.Sachin More shall be restricted to addition of penal provision only.

8. Learned APP, on instructions of the police officers, Smt.Gulab Patil and Mr.Sachin More, submits that the report submitted by Mr.Sachin More shall be held to be a final view of the investigating agency consequent to the order passed by learned Magistrate under section 173(8) of the Criminal Procedure Code. It is submitted that papers of further investigation carried out by Smt.Gulab Patil were perused by the A.P.I. who submitted his report, therefore, learned APP submits that the report signed by Smt.Gulab Patil could not be held to be a supplementary charge-

sheet.

9. On behalf of the intervenor, learned counsel by placing reliance on the judgment in case of ¹*Amrutbhai Shambubhai Patel V/s. Sumanbhai Kantibhai Patel and Ors.* refers to the observation made in para 49, which reads as under:-

“49. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant / informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication

¹ (2017) 4 Supreme Court Cases 177

in hand.”

Learned counsel submits that in view of the recent pronouncement of the Apex Court in the judgment cited supra, the Magistrate has no jurisdiction in law to direct further investigation on the application filed by the complainant.

10. Learned counsel appearing for the petitioner would like to distinguish the said judgment and cites the judgment of the Apex Court in the case of ²*Sakira Vasu V/s. State of Uttar Pradesh and others*.

11. We have gone through the material placed before us and the judgments cited supra. In facts of the case, we would not deal with the issue as to whether the Magistrate had power to order further investigation into the matter by passing order dated February 26, 2016.

12. The question is as to whether the report submitted by A.P.I. Sachin More shall be held to be the supplementary charge-sheet or report signed by Smt.Gulab Patil, of which copy was

furnished to the complainant be held to be a supplementary charge-sheet. It is pointed out that A.P.I. Sachin More has referred to the investigation carried out by Smt. Gulab Patil and then submitted his report on July 15, 2017 to the Court.

13. Taking into consideration the material placed on record, we are of the prima facie view that it is not for the petitioner to decide which report / supplementary charge-sheet shall be submitted by the Investigating Officer to the Court. The final decision in this regard shall be of the Investigating Agency. Based on the information provided to the petitioner, as alleged, under the Right to Information Act by the police, it would not be appropriate to direct the Investigating Agency to submit the report prepared by the then Investigating Officer Smt. Gulab Patil. It is for the Investigating Agency to decide as to whether still a supplementary charge-sheet, in the strict sense of the provisions of law, is required to be filed in the Court in accordance with the provisions of Section 173(8) of the Criminal Procedure Code.

14. We, therefore, leave the issue with the Investigating Agency. We direct the concerned Investigating Officer to discuss

the issue with the DCP, Zone-V and take a final decision after seeking appropriate instructions from the higher officer.

15. This case raises certain issues of concern which the Superior Officers of the Investigating Agency need to look into. It is submitted that under the Right to Information Act so called copy of supplementary charge-sheet was furnished to the petitioner. It be enquired into as to whether such a course of action could be adopted under the Right to Information Act before report is presented to the Magistrate or Superior Officers.

16. We, therefore, direct the DCP, Zone-V to call for record and take necessary steps so that such incidents do not occur in future which adversely affect image of the Investigating Agency.

17. The petition is disposed off.

18. In view of the disposal of the petition, the Criminal Application also stands disposed of accordingly.

19. The Registry is directed to forward a copy of the order to the DCP, Zone-V forthwith. The learned APP shall also intimate accordingly.

(NITIN W.SAMBRE, J.)

(NARESH H.PATIL, J.)