

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 504 OF 2016
IN
CRIMINAL WRIT PETITION No. 3680 OF 2016

Riten Devinder Ghai. ..Petitioner.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Amit Desai, Senior Advocate with Kunal Dalal i/b Pillai & Co., for the Applicant.

Mrs. A. S. Pai, APP for the State.

Mr. Amol Joshi i/b Ms. Poorvi Kanani for Respondent No. 6.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **April 17, 2017.**

P. C. :

1. Heard the learned Counsel appearing for the Applicant and learned APP for the State. This application is filed for following relief :

“that this Hon'ble Court be pleased to issue appropriate directions and orders to Respondent No. 2 to 5 or such other investigating agency for further investigation to collect and produce all material evidence which has remained to be collected and/or produced and further take such corrective steps to ensure that Respondent No. 6 to 8 are arrested and prosecuted for the aggravated disclosed offences in respect of FIR being CR No. 93/16 dated 24-02-2016 and charge-sheet bearing Cr.Case No. 1136/PW2016 before the Id. Addl. Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai”

2. Mr. Desai, the learned Senior Counsel appearing for the Applicant submitted that investigating agency has not complied with the order dated 19th December 2016 passed in Writ Petition No. 3680 of 2016 and therefore the Applicant is constrained to file present application for the above relief.

3. Writ Petition No. 3680 of 2016 was filed for following reliefs :

“that this Hon'ble Court be pleased to issue appropriate directions and orders to Respondent No. 2 to 5 or such other investigating agency for further investigation to collect and produce all material evidence which has remained to be collected and/or produced and further take such corrective steps to ensure that Respondent No. 6 to 8 are arrested and prosecuted for the aggravated disclosed offences in respect of FIR being CR No. 93/16 dated 24-02-2016 and charge-sheet bearing Cr.Case No. 1136/PW2016 before the Id. Addl. Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai”

. We disposed of this writ petition by recording the statement of learned APP that in respect of the incident in question, cross FIRs are filed being C.R.No. 93 of 2016 and C.R.No. 129 of 2016. We also recorded the statement of learned APP that investigation in both the CRs. is completed and charge-sheet is also filed before the concerned Magistrate. Learned APP on instructions further stated that further investigation under section 173(8) of the Code of Criminal

Procedure, 1973 is going on and all aspects would be taken into consideration including subsequent medical reports and appropriate action would be taken.

4. Learned APP on instructions now makes a statement that medical papers annexed with the said petition were forwarded to the JJ Hospital and opinion was sought, which is now received. She also submitted that investigating agency has sent CCTV footage to Cyber forensic lab and their opinion was also sought, and the report is already received. Considering these reports, she states that investigating agency has added section 326 of IPC in CR. No. 93 of 2016 [CC No. 1136/PW/2016 pending on the file of 9th Additional Metropolitan Magistrate, Bandra]. She states that supplementary charge-sheet would be filed in the said CR within a period of one week along with the medical papers, report received from JJ Hospital as well as CCTV footage along with report of the forensic lab. Statements are accepted.

5. Mr. Desai, the learned Senior Counsel appearing for the Applicant also makes a grievance about non application of section 307 of IPC in the said CR. We need not go into that question as while

exercising powers under section 240 of the Code of Criminal Procedure, 1973, the Magistrate can consider whether there is prima facie material to frame charge under section 307 of IPC and if so to pass appropriate order. Considering the facts and circumstances of the case, learned Metropolitan Magistrate is directed to hear the Applicant before framing charge.

6. In the light of above, Mr. Desai, the learned Senior Counsel appearing for the Applicant fairly states that his grievance made in the present application no more survives. Hence, the writ petition is disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]