

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRI. WRIT PETITION NO. 846 OF 2016

Smt.Suhasini W/o Lalitkumar Lohiya and another

-vs-

Sk. Haroon S/o Late Sk. Mohd. and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.S.V.Bhutada & Mr.Y.J.Maheshwari, counsel for the petitioners.
Mr.S.Raisuddin, counsel for the respondent No.1.
None for the respondent No.2 to 8.

CORAM : REVATI MOHITE DERE, J.

DATE : 06.12.2017.

Heard learned counsel for the parties.

By this petition, the petitioners have impugned the order dated 29/09/2016 passed by the learned Judicial Magistrate First Class, Court No.1, Nagpur below Exhibit-52 in R.C.C. No.1607 of 2011, by which the learned Judge was pleased to separate the trial of the petitioners from accused No.2 (unserved accused).

Learned counsel for the petitioners submits, that the respondent No.1-complainant had not taken any steps to serve accused No.2 and hence, there was no question of filing an application seeking separation of trial. He further submits, that since the provisions of section 317 of Cr.P.C. are not made out, the order passed by the learned Magistrate is without jurisdiction. He further submits, that the respondent No.1-complainant had failed to take recourse to the provisions of section 105 of Cr.P.C. with respect to service of summons on accused No.2.

Learned counsel for the respondent No.1-complainant opposes the petition. He submits, that no interference is warranted in the impugned order in writ jurisdiction. He further submits, that accused No.2 is the son of petitioner No.1 and, that the accused No.2 is residing in United States of America. He submits, that the respondent No.1-complainant had taken steps to serve accused No.2, however, the attempts to serve summons were unsuccessful. He submits, that in this light of the matter, since the matter is of the year 2011, the respondent No.1-complainant had no option but to file an application seeking permission to separate the trial of the accused No.2 from the petitioners.

Perused the papers. In June, 2011, the respondent No.1-complainant filed a complaint before the learned J.M.F.C., Court No.1, Nagpur, as against the petitioners and accused No.2 alleging offences punishable under sections 209, 406, 420, 426 and 465 of Indian Penal Code. The learned Magistrate was pleased to issue process as against the petitioners and accused No.2. All the petitioners were served, however, as the accused No.2 was not residing in India and had moved to U.S.A., the summons could not be served upon him. As a result of non-service of summons on accused No.2, the trial could not progress. It appears, that thereafter the petitioners filed an application for dismissal of the complaint for non-service of summons on accused No.2. It is informed, that the said application is pending. Thereafter, the respondent No.1-complainant filed an application in March, 2016 and sought permission for separating the trial of the petitioners from accused No.2. It is set out in the said application, that after making several

attempts, the summons could not be served on accused No.2 and, that the trial is getting delayed on account of the same. The said application was opposed by the petitioners. It was contended, that the application was premature and, that the prerequisites for ordering a separate trial under the Criminal Procedure Code were not satisfied and hence, the application for separation of trial be rejected. The learned Magistrate was pleased to allow the said application preferred by the respondent No.1-complainant seeking separation of trial vide order dated 29/09/2016. Admittedly, the accused No.2 (unserved accused) is the son of petitioner No.1. It appears, that the accused No.2 could not be served as he is residing in U.S.A. Section 317 of Cr.P.C. deals with separation of trial. The case is of the year 2011 and it appears, that the case could not be proceeded with, as the accused No.2 could not be served. The learned Magistrate had no option but to separate the trial and proceed with the case. No error or infirmity can be found in the impugned order dated 29/09/2016 warranting interference in writ jurisdiction. The petition is accordingly dismissed. There shall be no order as to costs.

All the parties to act upon the authenticate copy of this order.

JUDGE