

1 The above writ petition has been filed seeking a
direction to the Commissioner of Police, Mumbai to entrust the
fresh investigation to the specified agency like the Economic
Offence Wing of Mumbai Police Commissionerate in respect of
C.R. No. I/142/2005, which is registered with the M.R.A. Police
Station and in respect of which pursuant to the investigation, a
charge-sheet has been filed in the Court of learned Metropolitan

Magistrate, 38th Court, Ballard Pier. We are informed at the bar that the trial has commenced and even the Petitioner above-named has deposed in the trial. However, it is the case of the Petitioner that it is during the course of her deposition that various flaws and shortcomings in the investigation have come to the notice of the Petitioner. As a result of which the Petitioner is likely to be prejudiced in the trial.

2 The gravamen of the allegation in the case is the defrauding of the Petitioner and others like her by inducing them to part with 1% of the proposed loan amount so as to become entitled to the loan amount. Faced with the situation, where the trial has already commenced, the learned counsel for the Petitioner sought to place reliance on the judgment of the Apex Court, reported in A.I.R. 2017, Supreme Court, page 774 in the matter of Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel. The said judgment of the Apex Court can be said to be an exposition as regards the powers of the concerned

Court to direct further investigation under Section 173(8) of the Code of Criminal Procedure. The Apex Court having regard to the unamended and amended provisions of Section 173(8) of Cr.P.C. has opined that the power under Section 173(8) to direct further investigation can only be at the behest of the investigating agency which would have to apply for the same to the concerned Court and that for filing such an application, there is no limitation as regards the stage at which it can be filed. It is relying on the judgment of the Apex Court that the Petitioner is seeking the relief which we have adverted to in the earlier part of this order. However, during the course of the hearing of the above petition, it is brought to our notice by the learned APP, Mrs. Sonawane that the Petitioner has rushed to this Court without even making any application to the investigating agency in that regard. Upon this, the learned counsel for the Petitioner, Mr. Sovani states that a comprehensive representation would be made to the Deputy Commissioner of Police, Zone-I, for seeking further investigation

in the case in question. Learned counsel states that such a representation would be made within two weeks from date. If such a representation is received by the Deputy Commissioner of Police, Zone-I, he is directed to take a decision thereon within four weeks thereafter either issuing directions to the investigating agency to apply to the concerned Court for further investigation or declining the request of the Petitioner. We express no opinion in that regard.

3 In the light of the mechanism, which we have provided by the instant order, there is no warrant to keep the above petition pending. The petition is accordingly stands disposed of. It would be contingent upon the decision of the Deputy Commissioner of Police, Zone-I that the Petitioner may adopt the further course of action.

(Sarang V. Kotwal, J.)

(R.M. Savant, J.)