

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

**CRIMINAL WRIT PETITION NO.727 OF 2018
with
CRIMINAL WRIT PETITION NO.3116 OF 2017**

Rabia A. Khan

... Petitioner

Vs.

State of Maharashtra & Ors.

... Respondents

Mr.Aabad Ponda i/b Mikhail D. for the Petitioner in WP/727/2018

Mr.Aabad Ponda i/b Swapnil Ambure for the Petitioner in
WP/3116/20187

Mr.H.S. Venegavkar, for CBI

Ms.P.N. Dabholkar, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: DECEMBER 5, 2018

P.C.:

1. These Writ Petitions are directed against the order dated 20.1.2018 passed by the learned Sessions Judge, Mumbai whereby the prayer of the applicant for procuring the Blackberry Messaging (BBM) communication by sending the handsets to Central Forensic Science Laboratory, is rejected.

2. The applicant is the complainant, who lost her daughter as she committed suicide. Pursuant to her complaint, the offence u/s 306 of the Indian Penal Code is registered against the accused. The investigating agency i.e., the CBI has seized the handsets of the accused and the deceased with a view to verify the contents of the last messages sent and received by the deceased on her handset. Both the handsets were sent for retrieving the contents of the messages from those handsets. However, the experts from the CFSL informed that in the absence of the password, in both the handsets of blackberry, it is not possible to retrieve the data of the messages in the handsets. The password of the deceased is not known to anybody and the accused as per the case of the investigating agency, has provided an incorrect password and, therefore, the contents cannot be retrieved so, the messages could not be read.

3. It was submitted by the learned Counsel for the complainant that even without obtaining the password, the data of the messages can be opened and retrieved by use of new advanced techniques by the experts and for that purpose, the prosecution should send those handsets again to certain experts.

4. The learned Prosecutor has opposed the application mainly on the ground that this issue was already raised before the Division Bench and the Division bench has rejected this prayer and though that order was challenged before the Supreme Court, it was withdrawn later.

5. Heard submissions. Perused the order passed by the Division bench in Criminal Writ Petition No.669 of 2016 dated 9.2.2017, especially paragraph 42 and para 9 of the said order. It appears that the said issue was one of the issues argued and prayed before the Division Bench. The Division Bench in its order in para 42 has expressly dealt with the said issue and has said that "in our considered opinion, this is only a possibility and one cannot order reinvestigation for that purpose, when already Police and CBI had done sufficient investigation."

6. Perused para 9 of the order of the Division Bench where same submissions were made. Placing reliance on observations of the Division Bench in para 53 of the order Mr.Ponda, the learned Counsel for the petitioner, made submissions that the Division Bench has allowed the complainant to pray for any other relief and

the trial Court is empowered to allow such relief. The Division Bench has not shut the door of the complainant. In order to appreciate these submissions, the said observations in para 53 are reproduced below. The Division Bench has observed that -

"Nothing prevents the Petitioner from invoking the appropriate powers of the competent Criminal Court exercising such powers, including the powers under Section 216 so also 319 of Cr.P.C.. It is not as if the Charge-Sheet filed would conclude the matter and whatever alleged discrepancies or materials, which Petitioner has pointed out, would be shut out of the Court."

The complainant can still persuade the trial Court for redressal of her grievances on the basis of the material produced on record before the Court.

7. On this basis, the complainant has moved application praying for reinvestigation before the trial Court. The order is misinterpreted by the learned Counsel for the complainant. The observations made by the Division Bench in para 53 are general. However, in para 42, there are specific observations which have

put a full stop on the prayer of retrieving the BBM chat history and therefore, it cannot be looked into again by this Court. It is to be noted that in SLP No.2004/2017, the order of the Division Bench was challenged, however, subsequently, the petition was withdrawn by the applicant.

8. In the result, the petitions are dismissed.

(MRIDULA BHATKAR, J.)