

Anand

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

WRIT PETITION NO. 1136 OF 2017

Mohan Dattu Pavshe

.Petitioner

Vs.

The State of Maharashtra & ors.

.Respondents

Mr. J. M. Puranik, Advocate, for the Petitioner

Mr. H. J. Dedhia, APP, for the Respondents – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the Order dated 27.01.2017 passed by the learned Additional Sessions Judge, Kalyan below Exh. 26 in S. C. No. 100 of 2004, by which his Application (Exh. 26) praying for further investigation under Section 173(8) of Cr.P.C. came to be rejected.

3. Perused the papers as well as the impugned Order.

4. The Petitioner is the original Complainant. The Petitioner

had filed an Application seeking further investigation under Section 173(8) of the Code of Criminal Procedure (for short “Cr.P.C.”), pursuant to the liberty granted to him by this Court vide Order dated 18.10.2007 in Cri. Application No. 63 of 2007 filed in Cri. W. P. No. 619 of 2004. It also appears that prior to the Order dated 18.10.2007, the Division Bench of this Court vide Order dated 19.07.2004 passed in Cri. W. P. No. 619 of 2004 had disposed of the Petition in view of the statement made by the learned APP i. e. the learned APP had made a statement on the instructions of the Police Inspector, Thane Crime Branch, Kalyan Unit that he would re-investigate the matter in question. Pursuant to the liberty granted by this Court vide Order dated 18.10.2007, the Petitioner (Original Complainant) filed an Application before the trial Court and sought further investigation under Section 173(8) of the Cr.P.C.. The learned Judge rejected the said Application on the ground that the said Application was not maintainable in view of the Judgment of the Apex Court in the case of *Reeta Nag Vs. State of West Bengal & Ors.*, reported in *2010 ALL MR (Cri.) 1337 (S.C.)*. There is no infirmity or illegality in the said Order. In view of the Judgment of the Apex Court, the Magistrate cannot direct re-investigation under Section 173(8) of the Cr.P.C. on an Application made by the defacto Complainant. An Application for further investigation is permissible only, if preferred by

the investigating agency. Hence, no interference is warranted in the impugned Order dated 27.01.2017 passed by the learned Additional Sessions Judge, Kalyan below Exh. 26 in S. C. No. 100 of 2004. The Petitioner is always at liberty to file appropriate proceedings, if so maintainable before the appropriate Court.

5. Accordingly, the Petition is disposed of.

(REVATI MOHITE DERE, J.)