

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1580 OF 2016**

Noble House Co-operative Hsg. Society Ltd. ...Petitioner

Versus

The State of Maharashtra ...Respondent

Mr. Bhvesh Thakur a/w Mr. Wesley Menezes i/b Majmudar & Co. for the
Petitioner

Mr. H. J. Dedhia, A.P.P for the Respondent No.1-State

Mr. Girish Kulkarni i/b Ms. Mrunmai Kulkarni for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 5th JANUARY, 2018

P.C. :

1 At the outset, learned counsel for the petitioner seeks leave to
amend the prayer clause. Leave granted. Amendment to be carried out
forthwith.

2 Heard counsel for the parties.

3 By this petition, the petitioner has impugned the order dated
14th July, 2014 passed by the learned Metropolitan Magistrate, 66th Court,
Andheri, Mumbai, in CC No. 299 of 2014.

4 Learned counsel for the petitioner submits that at the stage of pre-cognizance, an accused has no right to file an application, much less, being heard. He submits that there was no justification for the Magistrate to accept the application filed by the respondent No. 2 and direct the petitioner (complainant) to file his say.

5 Learned counsel for the respondent No. 2 does not dispute the fact that at the stage of pre-cognizance, an accused has no right to be either heard, much less, file an application.

6 Perused the papers. On 10th June, 2014, the petitioner (original complainant) filed a private complaint as against the respondent No. 2 and others. It appears that on 14th July, 2014, before the learned Magistrate took cognizance of the said complaint, the respondent No. 2 filed an application and sought permission to place on record, the High Court order. On the very same day i.e. on 14th July, 2014 the learned Magistrate passed the following order :

“Complainant to file say”.

7 The petitioner filed the say to that application on 7th April, 2015 and raised a preliminary objection with regard to the maintainability of the said application preferred by the respondent No. 2. It is informed that the said application filed by the respondent No. 2 is still pending. On the face of it, considering the legal position, since the learned Magistrate has not taken the cognizance of the private complaint, there was absolutely no justification for the learned Magistrate to entertain the application filed by the respondent No. 2. Admittedly at the pre-cognizance stage, an accused has no right of being heard, much less, to file an application.

8 Accordingly, the impugned order dated 14th July, 2014 is quashed and set-aside. The learned Magistrate shall decide the complaint filed by the petitioner on its own merits, uninfluenced by the application filed or any other material placed by the respondent No. 2.

9 Since the complaint is of the year 2014, the learned Magistrate to pass appropriate orders on the said complaint, as expeditiously as possible.

10 The petition is allowed and is disposed of on the aforesaid terms.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.