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

WRIT PETITION NO. 1626 OF 2016

Asha Dharmpal Hiwale

.....Petitioner

V/s.

Dharmpal Ambadas Hiwale and Ors

.....Respondents

Ms. Ameeta Kuttikrishnana for the petitioner.

Mr. Kamlesh P. Mali for respondent nos. 1 to 6.

Mr. S. S. Pednekar APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 25, 2018.

P.C.

At the instance of the present applicant-complainant, R.C.C. no. 804 of 2010 for offence under section 498-A, 504, 506, 323 r/w 34 of the Indian Penal Code is initiated against respondent-accused.

2 Present applicant-complainant engaged an Advocate to assist the prosecution at whose instance, application Exhibit 41 under section 294 of the Code of Criminal Procedure, 1973 came to be

granted vide order dated 31/08/2013 permitting production of in all 30 documents.

3 Subsequent thereto, application Exhibit 92 came to be moved on 23/02/2015 for production of additional 16 documents. The learned Magistrate rejected the said prayer vide impugned order dated 05/03/2015 which was confirmed in revision by the learned Sessions Judge, Thane vide impugned order dated 04/03/2016. As such, this petition.

4 The learned counsel for the applicant would urge that pursuant to the complaint preferred by the applicant demonstrating inaction on the part of earlier Investigating Officer Mr. Sawant, Commissioner of Police directed inquiry, which resulted into transfer of investigation and change of Investigating Officer. She would then urge that even though she has engaged Advocate for watching the proceedings, still the fact remains that she was not aware as to mode and manner in which the investigation was carried out. According to her, serious lacunas are noticed in the investigation which has

prompted her to move second application under section 304 of the Code of Criminal Procedure, 1973. It is further urged that evidence of the Investigating Officer speaks of non investigation on certain issues. As such, application Exhibit 92 should have been granted by the Court below, in the interest of justice.

5 While countering the submissions, the learned counsel for the respondent submits that apart from want of locus of the present petitioner to file the petition, there are no reasonable grounds which warrants interference in extra ordinary jurisdiction. He sought dismissal.

6 When confronted, the learned APP submits that he has no instructions in the matter as to questioning of the order impugned at the behest of the prosecution before this Court.

7 In the aforesaid background, this Court proceeds to analyze the submissions made.

8 On the earlier occasion, the learned Magistrate, since was alive to the fact of granting complete opportunity of hearing to the present petitioner-complainant, granted her application Exhibit 41 vide order dated 31/08/2013 permitting her to produce 30 documents through Public Prosecutor.

9 So far as Exhibit 92 seeking production of additional 16 documents are concerned, almost all the documents referred to in the said list of documents were prior to the order dated 31/08/2013 passed below Exhibit 41 permitting the applicant to produce 30 documents on earlier occasion. Apart from above, the fact remains that investigation carried out by the changed Investigating Officer was never the subject matter of grievance and the evidence of the Investigating Officer is already completed. The matter before the learned Magistrate is fixed for recording statement of the accused under section 313 of the Code of Criminal Procedure, 1973. As such, from the conduct of the applicant, it could be inferred that applicant intended to fill in the lacunas apart from the fact that there is no locus conferred in the Statute on the applicant to seek orders in the

present nature from the Court of Magistrate or this Court seeking production of documents which were never the subject matter of charge-sheet.

10 Apart from it, the fact remains that, the trial having reached almost at the fag end, is sought to be protracted by production of additional evidence which was never produced before the Investigating Officer, though same was available at the time of investigation and while deciding earlier application.

11 That being so, I hardly notice any ground for interference in the impugned orders. Petition lacks merit, dismissed.

[NITIN W. SAMBRE, J.]