

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

CRIMINAL WRIT PETITION NO.1933 OF 2018

Ms. Ayesha Collector and anr.

... Applicant

V/s.

The State of Maharashtra and anr.

... Respondents.

Mr. Mahesh Jethmalani, Senior Advocate with Ms. Gunjan Mangala and Mr. Laxman Shahpur and Ms. Mansi Patel i/by Vivek P. Daswancy for the petitioner.

Smt. Veera Shinde, Mr. APP for the Respondent/State.

Mr. Shreeram Shirsat for Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 05th Sept. 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India the petitioners have impugned Order dated 30.11.2017 passed by the learned Metropolitan Magistrate, 25th Court, at Mazgaon, Mumbai in Summons Warrant Case SW/2500147/2012 arising out of MECR No.179/2012 thereby directing the appointment of New Investigating Officer for 'reinvestigation' in the said complaint lodged by respondent No.1.

2. Heard Shri. Jethmalani, the learned Senior counsel appearing for the petitioner, Shri. Shirsat, the learned counsel appearing for respondent No.2 and the learned APP. Perused the record.

3. By the impugned Order the learned Metropolitan Magistrate had directed 'reinvestigation' of the crime in Summons Warrant Case No. SW/2500/147/2012.

4. By now it is well settled position of law that the Courts of higher jurisdiction can direct further reinvestigation or even investigation 'de-novo' depending on the facts of the each case. However, the Magistrate can only direct further investigation under Section 173(8) of the Cr.P.C. The Magistrate has no power to direct 'reinvestigation' of the crime. Reliance is placed on the decision of the Supreme Court in the case of Vinay Tyagi vs. Irshad Ali @ Deepak and ors. reported in 2013 CRI.L.J. 754 : (2013) 5 SCC 762.

5. In view of the above, the impugned Order dated 30.11.2017 passed in Summons Warrant Case No. SW/2500147/2012 arising out of MECR NO.179/2012 is quashed and set aside.

6. Petition is allowed in the aforesaid terms.

(A.S.GADKARI, J.)