

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1883 OF 2017**

Subhash Balkrishna Soni	...Petitioner
Versus	
Ramesh Nambiyar & Ors.	...Respondents

Mr. Sugandh B. Deshmukh for the Petitioner

Mr. Suresh Dubey for the Respondent Nos. 1 and 2

Mr. H. J. Dedhia, A.P.P for the Respondent No.3-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 18th JANUARY, 2018

ORAL ORDER :

- 1 Heard learned counsel for the parties.

- 2 Rule. Respondents waive notice through their respective
 counsel.

- 3 Rule is made returnable forthwith and is taken up for final
 disposal, with the consent of the learned counsel for the parties.

4 By this petition, the petitioner has impugned the order dated 23rd March, 2017 passed by the learned Sessions Judge, Greater Mumbai, in Criminal Revision Application No. 942 of 2016, inasmuch as, the learned Judge quashed the order dated 9th August, 2016 passed by the learned Magistrate in CC No. 345/PW/2012 and remanded the case back to the Magistrate to pass appropriate orders, as per law, after hearing both the sides.

5 Learned counsel for the petitioner submits that there was no justification or reason for the learned Sessions Judge to set-aside the order dated 9th August, 2016 and remit the matter back for fresh consideration. He submitted that the learned trial Judge had considered all the aspects and that it was open for the learned Sessions Judge to pass appropriate orders, after hearing the parties.

6 Learned counsel for the respondent Nos. 1 and 2 vehemently opposed the petition. He submitted that no interference was warranted in

the impugned order. He submitted that no prejudice was caused to the petitioner by the said order, remanding the matter back to the trial Court.

7 Perused the papers as well as the impugned order. Admittedly, the respondent Nos. 1 and 2 had filed an application (Exhibit 2) seeking their discharge from the said case i.e. in CC No. 345/PW/2012 (arising out of C.R. No. 987/2011/EOW/Unit-3). The learned Magistrate, after hearing the parties, was pleased to reject the said application and directed that the matter to proceed for framing charge as against the accused persons. Being aggrieved by the said order dated 9th August, 2017 passed by the learned Additional Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, rejecting their application for discharge, the respondent Nos. 1 and 2 filed Criminal Revision Application No. 942 of 2016 in the Sessions Court. After hearing the parties, learned Sessions Judge vide order dated 22nd March, 2017 passed the following order :

“O R D E R

- 1) *Cri.Revision application no.942/16 is partly allowed.*
- 2) *Order passed by Ld.Addl.Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai on 9th August, 2016 in CC No.345/PW/2012 is hereby set aside.*

3) *Matter is remanded back to the Ld.Addl.Chief Metropolitan Magistrate, for passing appropriate order in the light of the aforesaid directions and as per law after hearing both sides.*

4) *MA No.1989/16 stands disposed of.”*

8 The case pertains to the year 2011. The learned Sessions Judge could have well gone through the charge-sheet and the material *qua* the respondent Nos. 1 and 2 and could have then decided the revision application. The reasons set out by the learned Sessions Judge did not warrant remanding the matter back to the trial Court.

9 Accordingly the petition is allowed. The impugned order dated 23rd March, 2017 passed by the learned Sessions Judge, Thane, Greater Mumbai, is quashed and set-aside.

10 Criminal Revision Application No. 942 of 2016 is restored back to its original file. The learned Sessions Judge shall decide the said application as expeditiously as possible and in any event, within three months from the date of receipt of this order. All contentions of both the parties are kept open.

11 It is made clear that this Court has not gone into the merits of
the said case.

12 Rule is made absolute. Petition is accordingly disposed of.

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

REVATI MOHITE DERE, J.