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

WRIT PETITION NO. 2159 OF 2014

Kacharu Babasaheb Shaikh

.....Petitioner

V/s.

The State of Maharashtra and others

.....Respondents

Mr. Samir Kumbhkoni for the petitioner.

Mr. H. J. Dedhiya APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 12, 2018.

P.C.

This petition is by complainant to complaint case being M.A. no. 5 of 2013. It is the case of the complainant that his son Akbar was working as driver with the respondent-accused and there was a dispute about the issue of payment of salary. As a consequence, when the son of the applicant, Akbar demanded the salary on 13/03/2011, accused-respondent assaulted him with iron rod, hockey stick etc which has resulted into registration of crime. Charge-sheet against the respondents was not filed for offence

punishable under section 307, 120 (B) r/w 34 of the Indian Penal Code, in the above referred background, the learned Magistrate refused to take cognizance under section 156 (3) of the Code of Criminal Procedure, 1973. The learned Magistrate then observed that accused persons were already charge-sheeted after registration of crime no. 52 of 2011 in R.C.C. No. 504 of 2011 for an offence under sections 326, 325, 324, 504, 506, 143, 147, 148 & b149 of the Indian Penal Code.

2 Against this order of the Magistrate refusing to pass an order under section 156 (3) of the Code of Criminal Procedure, 1973, Revision being no. 106 of 2013 was preferred which was rejected on 24/02/2014.

3 While questioning both these orders, the learned counsel for the petitioner-original complainant would invite attention of this Court to page 20 Exhibit 'C' so as to claim that crime no. 52 of 2011 was registered at the behest of one Alim Harun Bagwan and not out of the attack on the son of the present applicant caused on

13/03/2011. In addition, the learned counsel would urge that there is sufficient material on record including medico legal certificate which speaks of grievous injuries suffered by Akbar, the son of present applicant. Hence, accused persons, for offence punishable under section 307 of the Indian Penal Code and other sections of the Indian Penal Code should be proceeded against.

4 The learned APP on the other hand supports the order of the learned Magistrate and the one passed by the learned Sessions Court rejecting the Revision. The learned APP submits that along with affidavit-in-reply the document *qua* offence no. 52 of 2011 are produced wherein, respondents are charge-sheeted for offence punishable under sections 326, 325, 324, 504, 506, 143, 147, 148, 149 of the Indian Penal Code. The learned APP then would urge that based on the cross complaint of the accused persons in another crime in crime no. 53 of 2011 is registered for offence punishable under sections 324, 504, 506 r/w 34 of the Indian Penal Code. He would urge that once accused are charge-sheeted, matter lies in domain of the learned Magistrate before whom the prosecution

against accused persons is pending. According to him, if the Magistrate, upon perusal of the evidence brought before him is satisfied of the ingredients for offence under section 307 of the Indian Penal Code, it is always open for the Magistrate to direct further investigation. According to the learned APP, once the charge-sheet is filed, it is within the domain of the learned Magistrate or upon leave sought by the learned APP or Investigating Officer, further investigation can be carried out and not at the behest of the complainant. He prays for dismissal of the petition.

5 Considered rival submissions. It is worth to observe here that the the learned counsel for the petitioner has sought adjournment on the ground that affidavit filed by the learned APP dated 07/10/2016 was not served on him and other affidavit which was served on him dated 20/02/2018, calls for further instructions from his client.

6 Said request is rejected for the reason, that it is really unacceptable that it was not within the knowledge of the petitioner

that offence no. 52 of 2011 was registered *qua* the incident dated 13/03/2011 as reflected in both orders i.e. one passed by the Magistrate and another by the learned Sessions Judge. The ignorance pleaded on behalf of the petitioner cannot be accepted.

7 If the prayer of the learned counsel for the petitioner on behalf of the petitioner for further investigation, additional charge-sheet for offence punishable under section 307 of the Indian Penal Code along with other incidental sections, if appreciated, once the offence being investigated into, the Code of Criminal Procedure, 1973 does not recognize any power in the complainant to seek further investigation or additional investigation. All that can be said about right of the petitioner is to establish a case for punishing the accused for additional sections during the course of trial through his evidence particularly in this case, evidence of the victim. It will be always be open for the learned Magistrate to order further investigation and call for supplementary charge-sheet, if circumstances so demand.

8 So far as case in hand is concerned, order of the Magistrate

speaks of crime no. 52 of 2011 registered on the basis of incident dated 13/03/2011 and the accused persons were already charge-sheeted. That being so, I hardly notice any reason or ground which warrants interference in extra ordinary jurisdiction in the orders passed by both Courts below.

9 With an observation that the learned Magistrate, while dealing with trial in crime no. 52 of 2011 shall be sensitive to the fact that whether the offence under section 307 of the Indian Penal Code is made out or not and whether further investigation in the matter is warranted or not, I hardly notice any ground for interference. As such, petition stands dismissed.

[NITIN W. SAMBRE, J.]