

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

CRIMINAL WRIT PETITION NO.2379 OF 2018

Nana Tukaram Borse : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

**ALONG WITH
CRIMINAL APPLICATION NO.234 OF 2018
IN
CRIMINAL WRIT PETITION NO.2379 OF 2018**

Kiran Namdev Jadhav : Intervener/Accused

In the matter between

Nana Tukaram Borse : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Sushant Jadhwar for the Petitioner.
Mr. Y D Patil for the Applicant/Intervener.
Mr. Avinash Kamkhedkar, Addl. PP for the Respondent/State.

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.**
DATE : 04th JULY 2018

P.C.

1 The relief sought in the above Writ Petition vide prayer clause (b) is for a direction that the Respondent No.2 to file an application under Section 173(8) of the Criminal Procedure Code. This is in the context of the fact that the mobile phone allegedly belonging to the deceased has been produced by the Petitioner and was taken possession of by the Investigating Agency.

2 The learned Additional Public Prosecutor Shri Avinash Kamkhedkar on instructions states that the application dated 13/06/2018 was filed by the Investigating Agency through the District Government Pleader and Public Prosecutor, Nashik invoking Section 173(8) of the Criminal Procedure Code. According to his instructions the said application has been disposed of by the Trial Court in view of the fact that the above Writ Petition seeking the same relief is pending before this Court. However, the learned counsel appearing for the Intervener – Accused Kiran Namdev Jadhav states to the contrary viz. that the application is not yet disposed of.

3 Be that as it may, since the application was filed by the Investigating Agency before the Trial Court under Section 173(8) of the Criminal Procedure Code and assuming that the said application has been disposed of on the ground that the present Writ Petition is pending, we direct that the application be recalled and be taken on file by the Trial Court and decided on its own merits and in accordance with law within two weeks from date. Until then the trial which we have stayed by our order dated 26/06/2018 would continue to be stayed and the same would be contingent upon the decision that would be rendered by the Trial Court on the application filed under Section 173(8) of the Criminal Procedure Code.

4 The learned counsel appearing on behalf of the Petitioner and the

learned counsel appearing on behalf of the Intervener/Accused are agreeable to the said course of action being followed.

5 In so far as the prayer clause (c) is concerned, the same would also be contingent upon the decision that would be rendered by the Trial Court and the future course of action that the Investigating Agency would adopt.

6 With the directions as aforesaid, the above Writ Petition is disposed of.

7 In view of the disposal of the above Writ Petition, the Criminal Application No.234 of 2018 filed by the Intervener/Accused does not survive and the same to accordingly stand disposed of as such.

8 All concerned parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associate/Sheristedar.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]