

Anand

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

CRIMINAL APPLICATION NO. 773 OF 2017

Jagdish Patni .Applicant

Vs.

Nikita Prakash Patni & ors. .Respondents

Mr. C. Chanderpal a/w Ms Namita Shirke, Ms Minal Lad & Mrs.
Hardeep Kaur, Advocate, for the Applicant

Mr. H. J. Dedhia, APP, for the Respondent No. 4 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.01.2018

P.C.

. Heard learned counsel for the Applicant.

2. By this Application, the Applicant (Original Complainant) has impugned the Order dated 12.10.2015 passed by the learned Additional Sessions Judge, Greater Mumbai below Exh. 6 in S. C. No. 217 of 2015, by which the Applicant's Application (Exh. 6) for further investigation under Section 173(8) of the Code of Criminal Procedure (for short "Cr.P.C.") came to be rejected.

3. Learned counsel for the Applicant submitted that the

Application (Exh. 6) filed before the learned Sessions Judge was maintainable and that the learned Judge clearly erred in law by rejecting the same. He submitted that the Complainant is an aggrieved person and that he has a right to participate in the criminal proceedings and as such, an Application filed by him for further investigation under Section 173(8) of Cr.P.C. ought to have been entertained. He further submitted that the investigation conducted by the investigating agency was flawed and as such, it is only the Complainant, who can bring the same to the notice of the Court. He further submitted that the Judgment rendered in the case of ***Reeta Nag Vs. State of West Bengal & Ors.***, reported in ***2010 ALL MR (Cri) 1337 (S.C.)*** by the Apex Court was not binding on this Court. He also relied on the Judgments in the case of ***Sakiri Vasu Vs. State of Uttar Pradesh And Ors.***, reported in ***(2008) 2 Supreme Court Cases 409, J. K. International Vs. State (Govt. of NCT of Delhi) And Ors.*** reported in ***(2001) 3 Supreme Court Cases 462*** and ***Sudhir Vasant Karnataki & Ors. Vs. The State of Maharashtra & Ors.***, reported in ***2011 0 ALL MR (Cri) 96***.

4. Learned APP opposed the Application. He submitted that no interference was warranted in the impugned Order, inasmuch as the Application filed by the Applicant (Original Complainant) was not

maintainable in view of the Judgment of the Apex Court in the case of ***Reeta Nag Vs. State of West Bengal & Ors.***, reported in ***2010 ALL MR (Cri) 1337 (S.C.)***.

5. Perused the papers including the impugned Order.

6. The Applicant (Original Complainant) had lodged a complaint as against the accused, alleging offences punishable under Section 304 r/w 34 of the Indian Penal Code. After investigation, police filed charge-sheet as against the accused and the case was committed to the Court of Sessions in March, 2015. It appears that the Applicant (Original Complainant) filed an Application on 16.06.2015 and prayed for further investigation under Section 173(8) of Cr.P.C. and also prayed that the said investigation be conducted through the Deputy Commissioner of Police of the respective zone, to which the R. C. F. Police Station belonged. The said Application was rejected by the learned Additional Sessions Judge, Greater Mumbai vide Order dated 12.10.2015. Admittedly, the Application dated 16.06.2015 was preferred by the Applicant (Original Complainant) and not by the prosecutor. The Apex Court in the case of ***Reeta Nag (Supra)*** has observed that it is the investigating officer, who has power to conduct further investigation

under Section 173(8) of Cr.P.C., even after filing of the charge-sheet and that further investigation was permissible even after cognizance was taken by the Magistrate. It was also observed that the Magistrate cannot direct re-investigation / further investigation under Section 173(8) of Cr.P.C., on an Application made by the de-facto Complainant. As far other Judgments relied upon by the learned counsel for the Applicant are concerned, the said Judgments are not applicable to the facts of the present case. In view of the law laid down in the case of ***Reeta Nag Vs. State of West Bengal & Ors.***, no infirmity can be found in the impugned Order dated 12.10.2015, warranting interference in writ jurisdiction.

7. Accordingly, the Application is rejected. The learned Judge shall conduct the case on its own merits uninfluenced by the rejection of the aforesaid Application. It is always open for the Magistrate to invoke the provision of Section 319 of Cr.P.C., during trial, if warranted.

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

(REVATI MOHITE DERE, J.)