

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 855 OF 2017
IN
CRIMINAL APPLICATION NO.132 OF 2016**

Dilip Chhaged & Anr	..Petitioners
Vs.	
State of Maharashtra & Ors	..Respondents

**WITH
CRIMINAL APPLICATION NO.857 OF 2017
IN
CRIMINAL APPLICATION NO.132 OF 2016**

Dilip Chhaged & Anr	..Petitioners
Vs.	
State of Maharashtra & Ors	..Respondents

**Mr. Shyam Dewani a/w Mr. P. M. Takkar i/b Dewani and Associates for the
Petitioners**
**Mr. Pranav Badheka a/w Mr. Shrivardhan Deshpande and Mr. Omkar Bade
i/b Desai & Diwanji for the Respondent No.2**
Mr. K. V. Saste Addl PP for the Respondent State

**CORAM :R. M. SAVANT, &
SANDEEP K SHINDE,JJ
DATE : 30th JANUARY, 2018**

P.C.

1 The above Criminal Application NO.857 of 2017 has been filed for revival of the above Criminal Application No.132 of 2016 which was filed by the Applicant herein for quashing of the FIR in question and the charge sheet which has been filed by the Investigating Agency to the said FIR.

In so far as Criminal Application No.855 of 2017 is concerned, the

same has been filed seeking amendment to the said Criminal Application No.132 of 2016 in the event the revival is allowed.

2 In the context of the relief sought vide Criminal Application No.857 of 2016, few facts would have to be noted. The FIR in question was registered by N. M. Marg Police Station on 9-1-2015. The N. M. Marg Police Station thereafter carried out investigation and also filed the charge sheet on 20-1-2016. It seems that at the behest of the Applicants herein who are the accused, the investigation was transferred to the EOW Crime Branch, Mumbai under the orders of the Commissioner of Police Mumbai. The Applicant herein had filed the above Criminal Application No.132 of 2016 for quashing of the FIR and the charge sheet filed pursuant to the FIR. The first informant i.e. Morarji Mills had filed Writ Petition No.3682 of 2016 questioning the transfer of the investigation to the EOW. A Division Bench of this Court by order dated 26-10-2016 prima facie found the transfer of investigation to be improper and therefore directed the stay of further investigation by the EOW. The Petitioner in turn filed Criminal Application No.456 of 2016 seeking certain reliefs in the context of the fact that the investigation was transferred to the EOW. The sum and substance of the reliefs was that the Applicant be permitted to take appropriate steps contingent upon the investigation that would be carried out by the EOW. The concerned officer of the EOW Mr. Mandar Lad Assistant Police Inspector vide his letter dated 14-8-2017 addressed to the Applicant

No.1 Dilip Chhajed informed him about the fact that the EOW has scrutinized the charge sheet and related evidence and was of the considered view that there is no need of any further investigation in the said matter. The relevant excerpt of the said communication dated 14-8-2017 is reproduced hereinunder for the sake of ready reference:

“This office has made a scrutiny of the charge sheet and related evidence and is of considered view that there is no need of any further investigation in the said matter. Hence this office has filed this matter as “closed”. Accordingly all notices / letters issued by this office stand cancelled.”

3 At this stage, it is required to be noted that the application filed by the Applicant herein being Criminal Application No.456 of 2016 was heard by the Division Bench comprising of A. S. Oka and A.A. Sayed JJ. The said Criminal Application came to be disposed of on 21-10-2016 in terms of the order passed on the said day by the Division Bench. In the context of the relief sought in the above Criminal Application No.857 of 2017, paragraphs 2 and 3 of the said order assume importance and are reproduced herein under:

2 In view of the statement made by the applicants in Criminal Application No.456 of 2016, we permit applicants in Criminal Application No.132 of 2016 to withdraw the same with liberty as prayed for in the prayer made in Criminal Application No.456 of 2016. Order accordingly.

3 In the event, the order of transfer of the case to the Economic Offences Wing for reinvestigation is

set aside by this Court, needless to add that the applicants will be entitled to apply for revival of the main Criminal Application.

4 Hence a reading of the paragraph 2 of the said order discloses that the Applicants were permitted to withdraw Criminal Application No.132 of 2016 in terms of the prayer made in Criminal Application No.456 of 2016 and in so far as the consequence arising out of the Writ Petition filed by the first informant is concerned, it is provided for in paragraph 3 of the said order wherein the Division bench has observed that if the transfer of the case to the EOW for reinvestigation is set aside then the Applicant would be entitled to apply for revival of the Criminal Application.

5 It was the submission of the Learned Counsel appearing on behalf of the Applicant Mr. Dewani states that having regard to the letter of the EOW dated 14-8-2017, the Applicants are entitled to seek revival of their Criminal Application No.132 of 2016.

6 Per contra the Learned Counsel appearing on behalf of the first informant Mr. Badheka would contend that in terms of the order dated 21-10-2016 in which order are steeped the rights of the parties, the Applicants are only entitled to take appropriate steps arising out of the letter dated 14-8-2017 of the EOW.

7 Having heard the Learned Counsel for the parties we are in agreement with the submission made by the Learned Counsel Mr. Badheka appearing on behalf of the Respondent No.2 i.e. the first informant in the above Criminal Application. The order dated 21-10-2016 exfacie makes it clear that the Criminal Application No.132 of 2016 was allowed to be withdrawn in terms of the prayer sought in the Criminal Application No.456 of 2016, which was filed in the said Criminal Application No.132 of 2016, the prayer made in the said Application being one for being permitted to take appropriate steps. The Applicant would therefore be entitled to take appropriate steps in respect of the letter dated 14-8-2017 of the EOW. In our view the Applicant would not be entitled for revival of the Criminal Application No.132 of 2016 as there is no adjudication in so far as the transfer of investigation is concerned. Hence the above Criminal Application No.857 of 2017 is disposed of with liberty to the Applicants to take appropriate steps.

8 We however, make it clear that the Applicants would be entitled to seek the prayer which they had sought in Criminal Application No.132 of 2016 namely the quashment of the FIR and the charge sheet. We refrain ourselves from expressing any opinion in respect of the renewed challenge that would arise on account of the letter dated 14-8-2017 of the EOW and the quashing of the FIR / charge sheet that may be sought by the Applicants in the context of

the said supervening event. The contentions of the parties in that regard are kept open.

9 In view of the aforesaid, Criminal Application No.855 of 2017 for amendment to Criminal Application No.132 of 2016 would not survive and to accordingly stand disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]