

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

CRIMINAL WRIT PETITION No. 4718 OF 2014

Umesh K. Thakkar

...Petitioner

Vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Ghanshyam Upadhyay a/w. Parth Pandey i/b. LawJuris for Petitioner
Mr. S.S. Pednekar -APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 22, 2018

P.C.

1. Heard Shri Upadhyay, learned counsel for the Petitioner and the learned APP for the State.
2. In a Complaint Case being CC No. 97/SW/2014 preferred before the Learned Addl. Chief Metropolitan Magistrate, 8th Court, at Esplanade, Mumbai, the Petitioner-Complainant sought direction under Section 156(3) of the Code of Criminal Procedure against accused persons mentioned therein for an offence punishable under Section 417, 418, 420, 465, 467, 468, 471 r/w. 120B of the IPC. The complaint was based on certain contractual obligations between the parties wherein it is claimed that the Accused persons have forged and

fabricated certain documents so as to draw pecuniary benefits out of the said transactions. The learned Magistrate vide impugned order dated September 25, 2014 dismissed the complaint with following observations in paragraph 10:

“1-, However such is not found to be the case in the present matter. As the cause on the basis of which the present complaint is sought to be proceeded under section 156(3) of Cr.P.C. is also before the Hon'ble Apex Court. Under such circumstances, as the Hon'ble Apex Court has stayed the FIR of which the present complaint is an offshoot and the Hon'ble Apex Court is seized of the matter, the directions as sought by the Complainant in the present matter cannot be given. As a consequence of it, the present complaint deserves to be dismissed. Holding this, I proceed to pass the following order =

ORDER

- 1 The present complaint is dismissed.”*
2. Shri Upadhyay while questioning the aforesaid order would invite attention of this Court to the affidavit filed by the Petitioner on March 15, 2018 placing on record the true copies of the order dated 8th July, 2013 passed in CRLMP No(s). 12112 of 2013 perhaps which was on stamp number, orders dated 27.6.2013, 19th August, 2013, 16th September, 2013 and final order dated

December, 2, 2014 when the SLP preferred by one of the accused persons came to be dismissed.

3. According to him, since the complaint preferred by the Petitioner was dismissed in view of pendency of the aforesaid SLP, and once the SLP is dismissed, the order passed by the Magistrate which is impugned in the petition requires interference.

4. The Learned APP for the State does not dispute the aforesaid factual matrix. However, he submits that the Accused is not party to the present petition.

5. Since the complaint is dismissed at pre-cognizance stage and this Court is treating the prayer of the Petitioner for reconsideration of the complaint at pre-cognizance stage, objection raised by the APP is overruled.

6. The only reason cited by the Learned Magistrate in the order impugned while dismissing the complaint under Section 203 of Cr.P.C. is the pendency of the matters before the Apex Court involving the same dispute as that of in complaint. Once the issue which was brought before the Apex Court has been decided against the Petitioner in S.L.P. by dismissing the SLP, in my view, the order passed by the Learned Magistrate in the light of submission canvassed by the learned counsel for the Petitioner warrants interference.

7. For the aforesaid reasons, the order dated September 25, 2014 impugned in the present application passed below Exhibit '1' in C.C. No. 97/SW/2014 by the Additional CMM, Esplanade, Mumbai is hereby quashed and set aside. The complaint stood restored to the file of the said Magistrate.

8. Shri Upadhyay, learned counsel for the Petitioner fairly concedes that if require, he shall file fresh copy of the complaint along with relevant documents including true copy of the final order passed by the Supreme Court where by the SLP of the accused persons was dismissed. He further submits that the complainant shall appear before the Learned Magistrate on 23rd April, 2018.

9. It is expected that the Learned Magistrate to deal with the complaint afresh having regard to the subsequent development noted hereinabove from pre-cognizance stage.

Writ petition is allowed in the aforesaid terms.

[NITIN W. SAMBRE, J.]