

Anand

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

WRIT PETITION NO. 4688 OF 2017

Naveed Rafiq Penwala

.Petitioner

Vs.

The State of Maharashtra & ors.

.Respondents

Mr. Girish Kulkarni with Mr. K. Dave & Ms Nikita Chavan i/b. Lex Services, Advocate, for the Petitioner

Mr. H. J. Dedhia, APP, for the Respondent No. 1 – State

Mr. Abad H. H. Ponda i/b. Mr. R. B. Mungekar, Advocate, for the Respondent Nos. 2 to 10 & 13

CORAM : REVATI MOHITE DERE, J.

DATE : 24.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the Order dated 12.06.2015 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai in C. C. No. 109 / PW / 2009, by which the Petitioner's (Original Complainant's) Application for further investigation under Section 173(8) of the Code of Criminal Procedure was rejected.

3. It is well settled, that an Application for further investigation under Section 173(8) of Cr.P.C. is not maintainable at the

behest of the de-facto Complainant. The Apex Court in the case of *Reeta Nag Vs. State of West Bengal & ors.*, reported in *2010 ALL MR (Cri.) 1337 (S.C.)* as well as *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Ors*, reported in *(2017) 4 SCC 177* has clearly held that an Application seeking further investigation under Section 173(8) of Cr. P. C. at the behest of the de-facto Complainant is not maintainable. Admittedly, the impugned Order has been passed on an Application (Exh. 49) filed by the Respondent – Complainant for further investigation under Section 173(8) of Cr. P. C..

4. In view of the aforesaid Judgments, no interference is warranted in the impugned order. The Order dated 12.06.2015 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai in C. C. No. 109 / PW / 2009 as well as the Order dated 26.10.2015 passed by the learned Additional Sessions Judge, Greater Bombay in Cri. Revn. Appln. No. 862 of 2015 cannot be said to be perverse and unsustainable warranting interference in writ jurisdiction.

5. Accordingly, the Petition is dismissed.

(REVATI MOHITE DERE, J.)