

Anand

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

CRIMINAL APPLICATION NO. 1223 OF 2017

Prakash Shivchand Jakhete .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr. G. Kulkarni i/b. Mr. S. R. Mithare, Advocate, for the Applicant

Mr. V. Chate, APP, for the Respondent No. 1 – State

Mr. P. D. Gharat, Special Public Prosecutor, for the Respondent No. 2 –
CBI

CORAM : REVATI MOHITE DERE, J.

DATE : 11.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant has impugned the Order dated 27.11.2017 passed by the learned Addl. Chief Metropolitan Magistrate's 3rd Court, Esplanade, Mumbai in Case No. 726/PW/2009, by which the learned Magistrate was pleased to issue NBW as against the Applicant, on an Application preferred by the CBI.

3. Learned counsel for the Applicant submits that the Applicant's discharge Application was rejected by the learned

Magistrate on 23.10.2017, pursuant to which the Applicant challenged the same in Revision before the Sessions Court on 27.10.2017. Mr. Kulkarni, learned counsel for the Applicant submits that on 27.10.2017, in the first session, a copy of the Cri. Revision Application preferred in the Sessions Court was served on the CBI and the matter was kept in the afternoon on the request of a counsel appearing for the CBI. He submits that as in the second session, none appeared for the CBI, the learned Sessions Judge asked the Applicant's counsel to give fresh notice to the CBI, returnable on 29.10.2017. On 29.10.2017, some counsel for the CBI appeared and informed the Revisional Court that Mr. Gharat was to appear in the said matter, on behalf of the CBI and sought time. Pursuant thereto, the learned Sessions Judge stayed the proceedings before the trial Court. It appears that in the interregnum i. e. 27.11.2017 i. e. on the date on which the Applicant had filed the Revision Application before the Sessions Court, the learned Special Public Prosecutor for the CBI preferred an Application for issuing NBW against the accused, pursuant to which the learned Judge was pleased to issue NBW on the very same day i. e. on 27.11.2017.

4. In the peculiar facts and circumstances of this case, both, the Application for issuance of NBW and the order issuing NBW as

against the accused was unwarranted. Hence, the NBW as against the accused dated 27.11.2017 is cancelled.

5. Accordingly, the Application is allowed & is disposed of.

6. Learned counsel for the Applicant at this stage states, that the Applicant will remain present before the trial Court as & when so directed by the learned Judge. Statement accepted.

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

(REVATI MOHITE DERE, J.)