

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5100 OF 2017**

Ritu Kishore Bhatia	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. Mahesh Vaswani i/b Mr. Dharini Narendra Nagda for the Petitioner

Mr. A. D. Kamkhedkar, A.P.P for the Respondent-State

ACP Mr. Sudhir Kudalkar, I.O from ACB, Mumbai Unit, is present

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
TUESDAY, 5th JUNE, 2018***

P.C. :

1 The above Writ Petition has been filed for further investigation and to transfer the further investigation to another agency in respect of the Petitioner's FIR dated 19th November, 2010 being C.R. No. 55 of 2010 under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, as can be seen from prayer clause (A) which is the substantive prayer.

2 The aspect of further investigation into the said C.R. No. 55 of 2010 has a chequered history. It seems that the Petitioner who is the first informant, had filed an application before the trial Court for further

investigation, which application was rejected by the learned Special Judge by order dated 14th July, 2015, which resulted in the Petitioner filing a Writ Petition being Writ Petition No. 59 of 2017 in this Court. The Writ Petition was initially moved before a Division Bench of this Court, however, having regard to the multifarious reliefs sought in the Writ Petition, some of which were pertaining to the jurisdiction of the learned Single Judge, the Petitioner restricted the challenge in the said Writ Petition to the order dated 14th July, 2015 and sought liberty to seek the other reliefs at the appropriate stage. The statement of the learned counsel for the Petitioner was accordingly accepted by the Division Bench. In view thereof the Writ Petition was placed before the learned Single Judge. The learned Single Judge by order dated 16th November, 2017 rejected the said Writ Petition No. 59 of 2017 for the reasons mentioned in the said order. The order as can be seen is founded on the fact that further investigation under Section 173(8) of the Cr.P.C could not be sought by the complainant i.e. the first informant.

3 At this stage, it is required to be noted that contemporaneously, the trial was proceeding whilst the matter was pending before the learned

Single Judge. We are informed by the learned A.P.P Mr. Kamkhedkar that as many as three witnesses have been examined and the examination of the Petitioner is also complete. The above Petition is filed on the basis of the liberty the Petitioner claims to have reserved unto himself in terms of the order passed by the Division Bench in the said Writ Petition No. 59 of 2017 challenging the order dated 14th July, 2015 had come up before it. Having regard to the said liberty which was reserved, the maintainability of the Petition seeking the relief of further investigation cannot be in question. The question that begs an answer would, therefore, be whether we are required to exercise our discretionary jurisdiction in the facts of the instant case when the trial has progressed substantially and as many as three witnesses have been examined. The further investigation is sought purportedly on the ground that the investigation carried out by the investigating agency is shoddy. To buttress the said contention, the report dated 27th February 2014 filed by one Vidyasagar Kalkundre the Investigating Officer of the Anti-Corruption Bureau is sought to be relied upon and especially paragraphs 8, 9, 10 and 14 of the said report. By relying upon the said report, it is sought to be contended on behalf of the Petitioner that though the Petitioner had complained vide letters dated 13th

November, 2010 and 8th December, 2010 in respect of the manner in which the mobile phone used by the accused and which he allegedly threw from the toilet of the 4th floor of the building, has been dealt with by the Investigating Officer. It is required to be noted that the said report has been submitted on 27th February 2014, as can be seen from the date which has been affixed below the signature of the Investigating Officer at page 395. The said report as indicated above refers to the complaints made by the Petitioner vide her letters dated 30th November, 2010 and 8th December, 2010. If that be so, namely, that the Petitioner's complaints which were made in the year 2010 were not taken cognizance of by the investigating agency, it was for the Petitioner to seek appropriate reliefs from the appropriate Court at least after the said report was submitted in the year 2014. However, the record does not disclose that any such course of action was followed by the Petitioner. The prayer sought by the Petitioner for stay of the trial was specifically rejected by the learned Single Judge in the said Writ Petition No. 59 of 2017 filed challenging the order dated 14th July, 2015, however, the Petitioner also did not take any recourse against the said rejection of the prayer of stay of the trial. The Petitioner has participated in the trial and as indicated above, three witnesses have been

examined including the examination of the Petitioner, which is complete.

4 In our view, in the facts as aforestated, it is not possible for us to exercise our discretionary Writ Jurisdiction for interfering with the trial having regard to the stage at which it is at present. We, therefore, do not deem it appropriate to entertain the above Writ Petition. The same is accordingly dismissed.

5 Needless to state that the case in question would be decided on its own merits in accordance with law.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.