

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

CRIMINAL WRIT PETITION NO.1526 OF 2018

Pradeep Narottamdas Harsora & Ors. ... Petitioners

Vs.

The State of Maharashtra & anr. ... Respondents

Mr.N.K. Thakare I/b Ganesh Bhujbal for the Petitioners
Mr.A.R. Patil, APP, for the Respondent – State
Ms.Ruchita Patel for Resp. No.2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 11, 2019**

P.C.:

1. The petitioner has filed this Writ Petition praying that the trial conducted by the learned Metropolitan Magistrate, 18th Court, Girgaum, Mumbai is to be directed to be held *de novo*. The petitioners are facing trial under sections 420, 467, 471, 420 r/w section 34 of the Indian Penal Code in relation to C.R. no.278 of 2004 filed by respondent No.2 with the D.B. Marg police station, Mumbai. The evidence in Criminal Case No.108/PW/2005 is going on before the learned Metropolitan Magistrate.

2. The leaned Counsel for the petitioners/original accused submits that the petition is filed only on a short point that the

learned Magistrate has adopted a novel procedure of recording 2 sets of evidence in one trial and, therefore, the trial before the Magistrate is to be declared *de novo*.

3. The learned Counsel for the respondent/original complainant has pointed out that earlier, Criminal Writ Petition No.514 of 2016 was filed by the present petitioners on the same ground with the same prayer and the Division Bench had dismissed the said petition on 20.12.2016. She further submitted that Writ Petition No.3974 of 2015 was filed on the same ground, however, it was withdrawn on 29.6.2016. Writ Petition No.4217 of 2017 which was filed on the same ground, was withdrawn on 6.11.2017. The learned Counsel submitted that the Criminal Case is pending since 2005 and today, all the witnesses are examined except the Investigating Officer. She submits that the two sets of evidence of the same witnesses are recorded by the learned Magistrate as the application for impleading another person as accused under section 319 of Code of Criminal Procedure was allowed and, therefore, the proper procedure was adopted by the learned Magistrate by recalling the earlier witnesses as the charge was framed against the added accused. The leaned Counsel

submitted that this matter was time bound and was supposed to be finished by December, 2018.

4. Perused the order dated 20.12.2016 passed by the Division Bench of this Court. It shows that a similar prayer was made by the petitioners/accused in Writ Petition No.514 of 2016, however, the Division bench has specifically mentioned that as section 319 of the Code of Criminal Procedure requires *de novo* trial against the added accused, the procedure followed by the trial Court is correct as per the ratio laid down by the Constitutional Bench in the case of **Hardeep Singh vs. State of Punjab & Ors.**¹. It is a frivolous petition and should not have been filed and the valuable time of the Court should not have been taken in view of the orders passed by the Division Bench dated 20.12.2016. Hence, the Petition is dismissed with costs of Rs.15,000/-, to be paid to the complainant on 18th January, 2019 in the trial Court. The learned Magistrate to proceed and complete the trial, without fail on or before 15.3.2019.

5. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)

¹ AIR 2004 SC 1400