

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO9.2192 OF 2019

Tayyab Ali Hussain Lokhandwala : Petitioner
versus
State of Maharashtra : Respondent.

Mr. K B Rajput for the Petitioner.
Mr. N B Patil APP for the Respondent/State.

CORAM : S. S. SHINDE, J
DATE : 25th June 2019

P.C.

1 Heard the learned counsel for the Petitioner and learned APP for the Respondent/State.

2 The learned APP at the outset invites attention of this Court to the application filed by the Petitioner before the Trial Court and submits that the said application is titled as intervention application. The learned APP also invites this Court's attention to the contents of the said application and submits that keeping in view of the averments made in the said application, the application was allowed by the Trial Court. The learned counsel for the Petitioner – original complainant was allowed to assist the Public Prosecutor during the course of trial. According to the learned APP the order impugned in this Petition is passed keeping in view of the averments made in the said application and therefore no interference is called for in the impugned order.

3 The learned counsel for the Petitioner on instructions submits that it is true that there are no comprehensive averments in the said application, however, the fact that the said application was filed under Section 302 of the Criminal Procedure Code, that itself would indicate that the said application was filed to conduct the prosecution by the complainant.

4 Upon giving due consideration to the rival submissions and perusal of the contents of the application filed by the Petitioner, it is abundantly clear that there were no clear averments made in the said application praying therein to allow the complainant to conduct the prosecution.

5 In that view of the matter, no fault can be found in the order passed by the trial Court. In case the Petitioner desires to conduct the prosecution, in that case, the Petitioner may file comprehensive application before the trial Court. The learned counsel for the Petitioner on instructions submits that the Petitioner would file appropriate and comprehensive application within 10 days from today. If such an application is filed before the trial Court, the trial court to decide the same as expeditiously as possible, however, within one week from filing of such application and, on its own merits and in accordance with law.

6 However, it is made clear that in case the Petitioner files appropriate and comprehensive application before the trial court, the concerned court to decide the same keeping in view of the provisions of Section 302 of the Criminal Procedure Code and also the judgment of the Apex Court in *Dhariwal Industries Limited vs. Kishore Wadhwani and others* reported in *(2016) SCC 378*, and the judgment of this Court (Coram Mrs. Mrudula Bhatkar, J) dated 27/11/2018 in *Criminal Writ Petition No.4939 of 2018* in the matter of *Mrs. Dilnashin Shaikh w/o Amir Hamza Shaikh – Petitioner vs. State of Maharashtra – Respondent*, after giving opportunities to the parties.

7 With the above observations, without causing interference in the impugned order, the Writ Petition stands disposed of.

[S. S. SHINDE , J]