

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2138 OF 2017

Deepak Babulal Patwa .. Petitioner
(Orig. Complainant)

Vs

The State of Maharashtra & Ors. .. Respondents

...

Mr. S.S. Kulkarni for the Petitioner.

Mr. H.J. Dedhia, A.P.P. for the State.

Ms. Rukmini Khairnar for Respondent Nos.2 and 3.

CORAM: SMT. BHARATI DANGRE, J.

DATED : 26TH SEPTEMBER, 2019.

P.C:-

1. Heard learned counsel for the Petitioner and the Respondents.

2. The order below Ex-48 in Sessions Case No.5691 of 2007 passed by the Judicial Magistrate, First Class, Nashik, disclose that on an Application moved for addition of charge under Sections 420, 414 read with Section 34 of the IPC, the Magistrate has not acceded to the request on the ground that the matter is *subjudice*

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before the High Court for consideration of the allegation made in the Application and that the averments made therein are the defensive attack of the accused, which cannot be taken against them.

3. In Criminal Revision Application, the District and Sessions Judge, Nashik has followed the same course of action and rejected the Revision by Order dated 03/01/2017.

4. It is not in dispute that in Criminal Application No.371 of 2015 preferred by one Kishor Pawar, this Court by Order dated 12/04/2016 has issued Rule and stayed the proceedings qua the Applicant therein (i.e. Orig. Accused No.2) – Kishor Pawar.

5. The parties do not have any dispute about the fact that as against the wife of the Applicant (i.e. Original Accused No.2), the proceedings are in progress. In such circumstances, the pendency of the proceedings qua the Applicant (Orig. Accused No.2) - Kishor Pawar cannot preclude the Magistrate from considering the Application for addition of charge. The parties are at liberty to advance their submissions and the Magistrate would then consider the same without being influenced by the Order passed by the High Court against one of the Applicants i.e. Orig. Accused No.2.

6. In the circumstances, learned Judicial Magistrate, First Class, Nashik, is directed to decide the Application, below Ex-48 for

addition of charge after affording an opportunity of hearing to both the parties.

7. In the circumstances, the impugned order dated 03/01/2017 passed by the learned Sessions Judge, Nashik and impugned order dated 14/11/2016, below Ex-48, passed by learned Judicial Magistrate, First Class, Nashik, are quashed and set aside.

8. The Writ Petition is allowed to that extent.

(SMT. BHARATI DANGRE, J.)