

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

CRIMINAL WRIT PETITION NO. 3675 OF 2019

Rakesh J. Turakhia

...Petitioner

Versus

The State of Maharashtra and Anr.

...Respondents

Ms. Mallika Ajay Ingale for the Petitioner.
Mr. A.R. Patil, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 21st AUGUST 2019

P.C.:

1. Heard learned counsel appearing for the Petitioner. Learned counsel invites attention of this Court to the order passed by the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai on 08th May 2017 and submits that, the Magistrate has discretion to direct the investigation under Section 202 of the Cr.P.C. by the police. According the said court entrusted the investigation with Malad Police Station, Mumbai. She submits that, there was no reason for the Sessions Court, to cause interference in the said order and modify the order passed by the Magistrate, and direct the Magistrate to cause the inquiry himself under Section 202 of the Cr.P.C. It is

submitted that, the observations made by the Sessions Court in paragraph no. 15 of the impugned order that, the offences committed by the Respondent No. 1 is triable by the Sessions Court are not keeping in view the averments in the complaint. Learned counsel further submits that, upon reading the averments in the complaint no such offence is disclosed which is triable by the Sessions Court. Learned counsel also invites attention of this Court to the Section 367 of the I.P. Code and submits that, if the averments in the complaint are read carefully / an offence under Section 367 I.P. Code, is not attracted, and consequently offence under Section 367 of the I.P. Code is not disclosed. Therefore, learned counsel submits that the order impugned may be set aside and the directions issued by the Magistrate for an investigation by the police may be restored.

2. Learned counsel further submits that, the allegations made in the complaint are not correct. Complainant was admitted in the hospital with the consent of the mother. She submits that, complainant is suffering from the paranoid schizophrenia.

In the alternate learned counsel submits that, if this Court

is not inclined to consider the relief claimed in terms of prayer clause 'a', this Court may at least direct the learned Magistrate to seek the opinion of the Medical Experts from the panel of Doctors of Government Hospital about mental health of the complainant. Learned counsel invites attention of this Court to the pleading and grounds taken in the Petition and annexures thereto and submits that, Petition deserves to be allowed.

3. Learned APP appearing for the Respondent – State submits that, upon careful perusal of the averments in the complaint the offences triable by the Sessions Court are disclosed. In addition to it he submits that, upon reading an averments in the complaint, the ingredients of Section 307 of the I.P. Code are are attracted and therefore, this Court may not cause interference with the order passed by the Sessions Court.

4. Heard learned counsel appearing for the Petitioner and learned APP appearing for the Respondent – State. With their able assistance perused the averments in the complaint and in particular paragraph nos. 14 to 19 thereof. *Prima facie* averments made in the

complaint would make it clear that ingredients of cognizable offence triable by the Sessions Court are attracted and therefore, the finding recorded by the Sessions Court in paragraph no. 14 of alleged offence committed by the Respondent No. 1 triable by the Sessions Court cannot be said to be without any basis or in absence of averments in the complaint. The complaint filed by the Respondent is at initial stage of inquiry, which is directed by the Sessions Court. Therefore, at this stage to consider the contentions of the Petitioner that, no offence is disclosed under Section 367 of I.P. Code or no other offence is disclosed which is triable by the Sessions Court would be premature. The learned Magistrate in his discretion may call the medical report, if necessary. Therefore, at this stage it may not be desirable to give any directions to the Magistrate to conduct the inquiry in particular manner. If such directions are issued, it may amount to an interference in the discretion of the Magistrate recognized under law. In that view of the matter, at this stage there is no need to elaborate reasons. Suffice it to say that, the order passed by the Sessions Court needs no interference. At appropriate stage of the proceedings the Petitioner may get an opportunity, in case after inquiry the Magistrate is satisfied to summon the accused. All the contentions raised on merits are kept

open to be agitated at the appropriate time.

5. With the above observations Writ Petition stands rejected.

6. The observations made by the Sessions Court in the impugned order or by this Court herein above are *prima facie* in nature and confined to the adjudication of the present Writ Petition only which is arising out of order passed by the Sessions Court and said observations will have no bearing on further proceeding pending before the Magistrate.

(S.S. SHINDE, J.)