

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

**CRIMINAL WRIT PETITION NO. 3507 OF 2018
WITH
CRIMINAL APPLICATION NO. 175 OF 2019**

Smt. Taslima Rafiq Makwa. ...Petitioner

Versus

The State of Maharashtra. ...Respondent

Mr. Satyavrat Joshi a/w. Mr. Shivaji Popale, Ms. Surbhi Soni
i/b. Ameya Lambhate, advocate for the Petitioner.

Mr. Yogesh Rawool a/w. Mr. S.S. Redekar, advocate for
intervenor.

Smt. S.D. Shinde, APP for State.

**CORAM : B.P. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.**

DATE : DECEMBER 4, 2019.

P.C.:

1 Heard for some time. In relation to death which has taken place between 26/4/2009 to 29/4/2009, a grievance was made to this court in Writ Petition No. 3938 of 2012 that investigating officer was biased. That petition was disposed of on 3/1/2013 giving liberty to petitioner to make representation and directing respondent to take suitable decision upon it within 3 weeks.

2 The petitioner states that thereafter charge-sheet was

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filed. Accused Nos. 1 to 3 were charge-sheeted on 29/6/2013 and supplementary charge-sheet has been filed against accused No. 4 in December, 2013. Prior to that on 13/10/2013 they had made a representation.

3 After hearing respective Counsel, we find that the investigating agency was changed and investigation was carried out by CID. Charge-sheets have been filed by CID.

4 The statement of so-called eye witness by name Famma was recorded on June, 2009 and accused were arrested in 2013.

5 One of the grievance is that eye-witness was not knowing accused persons and therefore, test identification parade should have been conducted. It is further submitted that CDR relevant for the purpose has not been collected and there is no DNA analysis in so far as cigarette butts and hairs seized from the spot are concerned.

6 Learned APP has pointed out that after filing charge-sheet, present court has been approached almost after 5 years with grievance of this nature. CDR relevant for the purpose has been collected and necessary material was already produced before the trial court.

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7 We find that grievance of this nature is being made almost 5 years. Initially, effort was made to demonstrate that filing of charge-sheet was not within the knowledge of petitioner complainant and after getting knowledge time of about one year was required to procure certified copy thereof. After procuring certified copy, present petition has been filed.

8 The fact that petitioner has obtained earlier order from this Court on 3/1/2013 or then has made representation on 13/10/2013 after filing of charge-sheet cannot be lost sight of.

9 Investigation has not been carried out by the Investigating Officer who earlier had avoided to register offence under section 302 of the Indian Penal Code. New Investigating agency has filed first charge-sheet and thereafter supplementary charge-sheets.

10 Not holding of test identification parade by itself cannot be seen as fatal defect atleast at this stage. Considering the time lag, we are not inclined to intervene in extraordinary jurisdiction.

11 In this situation, we keep contention of the petitioner

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open and dispose of petition.

12 Pending Criminal Application is disposed of.

(SMT. SADHANA S. JADHAV, J) (B.P. DHARMADHIKARI, J)