

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1214 OF 2017

Ritika Amit Agarwal	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

...

Mr.A.K. Maheshwari for the applicant.
Mr.H.J. Dedhia, APP for the State.

CORAM: SMT.BHARATI DANGRE, J.

DATED : 26th SEPTEMBER, 2019

P.C:-

1 The applicant-wife being dissatisfied with the order dated 1st November 2017 passed by the Addl. Chief Metropolitan Magistrate, 32nd Court, Bandra, has approached this Court and seek a direction for issuance of appropriate directions. The case of the applicant in a nutshell is that in the proceedings instituted under Section 12 of the Domestic Violence Act by the applicant, the respondent husband filed a written statement. In the written statement, he had taken a stand and made certain allegations in relation to the character and person of the applicant. This constrained the applicant to file a complaint before the Chief Metropolitan Magistrate under Section 500, 504, 506 II of IPC r/w Section 34 IPC. The Magistrate, on 1st November 2017, called for the report of the

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concerned police station under section 202 of the Code of Criminal Procedure.

2 It is pertinent to note that on a complaint being filed, the Magistrate is expected to examine on oath the complainant and the witnesses, if any, and would then reduce the substance of such examination in writing which shall be signed by the complainant and witnesses. The Magistrate under Section 202 of Cr.P.C is empowered to postpone the issuance of process, in the contingency where the accused is residing at a place beyond an area in which he exercises his jurisdiction and is also empowered to inquiry into the case himself or direct an investigation to be made by a police officer or by such other person he thinks fit for the purpose of deciding whether or not there is sufficient ground of proceeding against the accused.

3 Pertinent to note that the complaint preferred by the applicant pin-pointedly invited the attention of the Magistrate to the statement contained in the written statement of the accused persons and this was something personal between the family and in particular, the husband the wife. In regards to the said statement, it is not understood as to how the police report can be of any assistance.

4 By way of a procedural rigmarole the Magistrate has ordered calling of a report from the concerned police station

while exercising the powers under Section 202 of Cr.P.C. This course of action by the learned Magistrate, does not attain the objective under Section 202 and in particular, when the allegations are purely based on the contentions contained in the written statement and exclusively between the parties as husband and wife. The said order passed by the Magistrate therefore cannot be sustained and is quashed and set aside.

5 The Chief Metropolitan Magistrate is directed to examine the complaint by following the procedure prescribed and only on being satisfied that it is expedient to do so.

SMT. BHARATI DANGRE, J