

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3568 OF 2016**

Maitreya V. Doshi

....Petitioner.

Vs.

The State Of Maharashtra & Anr.

....Respondents.

Mr. Ankit Lohia and Gunjan Mangla a/w Manas Kotak i/by Desai & Diwanji
for the Petitioner.

Mr. Amit Palkar, APP for the Respondent No.1-State.

CORAM : A. S. GADKARI, J.**DATE : 22nd FEBRUARY, 2021.****P.C.:-**

By the present Petition under Article 227 of the Constitution of India, the Petitioner has impugned, Judgment and Order dated 9th August, 2016 passed by the learned Additional Sessions Judge, Mumbai in Criminal Revision Application No.462 of 2015, dismissing the said Revision and confirming Order dated 26th March, 2015, passed by Metropolitan Magistrate, 40th Court, Girgaon, Mumbai below Exh-105 in C.C No. 399/SS/2014.

2 Heard Mr. Ankit Lohia, learned counsel for the Petitioner and Mr. Palkar, learned APP for the Respondent No.1-State. Respondent No.2 is absent, though duly served.

3 The Petitioner is an accused in Criminal Case No.399 of 2014

instituted by the Respondent No.2 for committing an offence under the provisions of Companies Act.

Dr. T. Pandian, Registrar of Companies, Maharashtra State, Mumbai by its letter dated 27th September, 2013 informed Mr. J.R. Solanki, Additional PP appearing before the Trial Court in the said Complaint, for taking necessary action in the matter, as his office had received instructions from its Ministry to withdraw the said Complaint. By a reminder letter dated 17th December, 2013, Dr. T. Pandian, Registrar of Companies, Maharashtra State, Mumbai again requested the concerned Additional PP appearing before the Trial Court to withdraw the said Complaint. Along with the said letter, an Application for withdrawal of Complaint was also forwarded to the concerned Additional P. P.

4 The concerned Additional P. P. appearing before the Trial Court did not pursue the said Applications dated 27th September, 2013 and 17th December, 2013 before the Trial Court. The Petitioner therefore, filed an Application under Section 257 of the Code of Criminal Procedure, 1973 (for short, "*the Cr.P.C.*") below Exh-105 for withdrawal of the Complaint before the Trial Court. Letter dated 16th December, 2013, duly signed by Mr. Manoj Bang, Assistant Registrar of Companies, Maharashtra Mumbai was annexed to the said Application for withdrawal of Complaint below Exh-105.

5 The Trial Court, by its Order dated 26th March, 2015 rejected

the said Application on the ground that, it is the prerogative of the Complainant to withdraw the Complaint and the Petitioner has no authority to do so. The Criminal Revision Application No. 462 of 2015 preferred by the Petitioner has been dismissed by the learned Additional Sessions Judge, Mumbai by its Judgment and Order dated 9th August, 2016, predominantly on the same ground.

6 Mr. Lohia, learned counsel for the Petitioner submitted that, as the concerned Additional P.P. did not file Application for withdrawal of the said Complaint, the Petitioner was constrained to file the same below Exh-105. He submitted that, despite clear directions issued by the Ministry in that behalf, the learned Additional P. P. appearing before the Trial Court is obliging the Respondent No.2 and it was the precise reason, the Petitioner had to file the said Application below Ex-105.

7 Section 257 of the Cr.P.C., deals with withdrawal of Complaint. It reads as under:-

*257. **Withdrawal of complaint.** - If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn."*

A plain reading of Section 257 of the Cr.P.C. would clearly indicate that, a Complaint can be withdrawn by the Complainant at any

time before a final order is passed in any case under the said Chapter. In view thereof, it is further clear that the Accused does not have any *locus-standi* to file an Application for withdrawal of the Complaint.

8 The argument advanced by the learned counsel for the Petitioner that, as the concerned Public Prosecutor appearing for the Complainant before the Trial Court is not doing the needful and the Petitioner-accused was constrained to file an Application for withdrawal of Complaint, therefore cannot be accepted and is accordingly rejected.

9 After perusing the impugned Orders dated 26th March, 2015 passed by the Trial Court below Exh-105 in C.C No. 399/SS/2014 and dated 9th August, 2016 passed by the Revisional Court in Criminal Revision Application No.462 of 2015, this Court is of the opinion that, the Trial Court, as well as, the Revisional Court have not committed any error while passing the impugned Orders.

Petition being devoid of merits and is accordingly dismissed.

Ad-interim relief granted earlier to remain enforce for four weeks from today.

11 It is made clear that, dismissal of the present Writ Petition will not preclude the Assistant Registrar of Companies, Maharashtra, Mumbai from filing a fresh Application before the Trial Court, for withdrawal of said Complaint by following necessary procedure.

(A.S. GADKARI, J.)