

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.397 OF 2018

Janata Nagri Sahakari Pat Sanstha Maryadit, Deulgaon Raja through its President, Shantilal
Nemlalsa Singalkar

Vs.

The State of Maharashtra through the Ministry of Home Department, Mantralaya, Mumbai –
32 and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. R. Joharapurkar, Advocate for petitioner.
Shri S. M. Ghodeswar, Addl. P. P. for respondent/State.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 15/02/2021

1. Heard Shri Joharapurkar, learned counsel
for the petitioner and Shri Ghodeswar, learned Addl. P. P.
for respondent/State.

2. By this petition, the petitioner is seeking
issuance of direction to respondent no.2 Police Station,
Deulgaon Raja to conduct further investigation in Crime
No.112/2010 and submit the report in Criminal Case
No.10/2012 pending on the file of learned Judicial
Magistrate First Class, Deulgaon Raja. By making such a
prayer, the petitioner is only seeking a direction to the
Investigating Officer in terms of Section 173(8) of the

Code of Criminal Procedure, 1973 which reads as under:

“(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

3. It is thus clear that ultimately the direction sought by the petitioner in this case does not travel beyond the scope of Section 173(8) of the Cr. P.C. A similar petition with similar prayer was earlier filed by the petitioner, but that was before the learned Single Judge. Learned Single Judge then found that the petition was not maintainable in view of the law laid down by the Hon'ble Supreme Court in the case of *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others*, (2017) 4 SCC 177, according to which,

the right to move the Court under Section 173(8) of the Code of Criminal Procedure, vests only in Investigating Officer and it is only the Investigating Officer who can seek a direction or leave to further investigate the matter. This law also makes it clear that the complainant or informant has no *locus standi* to ask for any additional or further investigation. In view of the law so settled by the Hon'ble Apex Court, the petitioner sought leave of the learned Single Judge to withdraw the petition and the petition was permitted to be withdrawn with liberty as per the order passed on 21.03.2018 in Criminal Writ Petition No.45 of 2018. As similar prayer has been made in this petition also, this petition would not be maintainable.

4. Of course, learned counsel for the petitioner submits that Criminal Writ Petition No.45 of 2018 was filed before learned Single Judge and it was disposed of by learned Single Judge and that the present petition is filed before the Division Bench. We do not understand as to what difference it would make in filing a petition before the Division Bench when the law is equally

applicable to the lis decided by the learned Single Judge and the lis to be decided by the Division Bench when, the lis involved in both cases is identical. However, if any difference is to be seen in the earlier attempt of the petitioner and the present similar attempt, the difference would be only in terms of the change in the Advocate representing the petitioner.

5. Learned counsel for the petitioner submits that in Criminal Writ Petition No.45 of 2018, what was actually challenged was the order passed by the learned Judicial Magistrate First Class in rejecting the application of the petitioner for issuing a direction to the Investigating Officer to further investigate the matter and whereas, the petitioner in the present case has come before this Court without challenging the said order of the Magistrate and independently of the power of the Magistrate. This is only another way of making an attempt to mask this petition as the one which would be maintainable under Article 226 of the Constitution but what lies underneath it is the locus of the petitioner, who is the complainant, to seek further investigation and this

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issue is already well settled by the judgment of the Hon'ble Apex Court in the case *Amrutbhai Shambhubhai Patel* (supra), relied upon by the learned Single Judge.

6. Thus, we find no substance in this petition, and same stands dismissed.

JUDGE

JUDGE

Sarkate