

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4539 OF 2018

Umesh Pandurang Gore

...Petitioner

vs.

The State of Maharashtra and Others

...Respondents

Mr. Satyawrat Joshi, for the Petitioner

Mr. H.J. Dedhia, APP for the Respondent-State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 22, 2022

P.C.:

1. Heard Mr. Joshi, learned counsel for the petitioner.
2. The challenge in this petition is to an order passed by learned JMFC, Court No. 2, Ichalkaranji on an application (Exhibit 78) in RCC No. 8 of 2011 whereby the petitioner's application for a direction for further investigation under section 173(8) of the Code of Criminal Procedure came to be rejected.
3. Mr. Joshi, the learned counsel for the petitioner submitted that the learned Magistrate committed an error in rejecting the application despite the petitioner having made out a strong ground to warrant a direction for further investigation. It was submitted that the learned Magistrate did not apply the correct principles

which govern the exercise of jurisdiction to order further investigation.

4. I find it rather difficult to accede to the submissions of Mr. Joshi. The learned Magistrate has recorded that in this case the trial has commenced and even the evidence of the informant /petitioner came to be recorded. The application for further investigation was not made by the investigating agency. Thus, applying the law laid down by the Supreme Court in the case of **Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and Ors., (2017) 4 SCC 177** the learned Magistrate was persuaded to reject the prayer for direction for further investigation.

5. In the case of **Amrutbhai** (supra) the Supreme Court expounded the legal position as under:-

49] On an overall survey of the pronouncements of this Court on the scope and purport of [Section 173\(8\)](#) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the

Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

6. In view of the aforesaid position in law, the learned Magistrate committed no error in rejecting the application for direction for further investigation. Thus, no fault can be found with the orders passed by the Courts below.

7. Writ petition stands dismissed.

(N. J. JAMADAR, J.)