

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

43 CRIMINAL WRIT PETITION NO. 403 OF 2020

**NAV AKANSHKA MAHILA MANDAL PARBHANI
VS
STATE OF MAHARASHTRA AND OTHERS**

Mr. Hemant Survey, Advocate for the petitioner
Dr. Rajendra G. Godbole, Advocate for the respondent No.1
Mr. P. M. Kulkarni, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 20-02-2023

PRONOUNCED ON : 03-04-2023

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1. A short question that arises in this petition is as to whether informant has a right to file an application under Section 173(8) for further investigation.

2. This petition is by original informant challenging an order passed by the learned CJM, Parbhani dated 18-09-2017 on an application below Exh.25 in RCC No. 184/2014. The petitioner had challenged this order by filing Criminal Revision No.127/2017. This revision came to be dismissed by the learned

Additional Sessions Judge, by its order dated 19-10-2018 holding that informant does not have a right to file an application under this section.

3. The facts in short are that:

a] Respondent No.3 accused secured a job in the petitioner society by producing a certificate showing that he has passed typing examination in 2006. Said certificate was found to be false. On realizing this the petitioner society sent a letter to Nawa Mondha Police Station, Parbhani dated 03-02-2013. The police carried out investigation and filed a charge-sheet.

b] After filing of the charge-sheet dated 09-03-2014 case was registered as RCC No.184/2014 for the offences punishable under Sections 420, 467, 468 of the Indian Penal Code. The petitioner on 09-01-2017 made a representation to the Superintendent of Police, Parbhani and requested for re-investigation.

c] The petitioner thereafter also filed an application No. 143/2017 in the court. The learned CJM, has rejected the application and thereafter revision also came to be rejected.

d] While deciding the criminal revision learned Sessions Judge considered the judgment reported in the case of Amrutbhai Pate Vs Sumanbhai reported in 2017 All STC (Criminal) 369 and held that it is only the Investigating Officer who can file an application for further investigation. It was also held in the said case that the application was filed by the Advocate engaged by the informant to assist the Public Prosecutor.

3. During the course of the argument the learned advocate for the petitioner relied upon the judgment of the division bench of this court in criminal application No. 6095/2015 wherein this court has held that anyone can set or put the criminal law into motion except where the statute

enacting or creating an offence indicates to the contrary. In the said case facts were different. There is no dispute about proposition. In this case it is found that in fact on the complaint of the petitioner only the law is set in motion. There is nothing in the judgment to indicate that the informant can file an application under Section 173(8). He also relied upon the another judgment in the case of *MMTC Ltd Vs. M/s. Medchl Chemicals & Pharma (p) Ltd. reported in (2002)1 SCC 234*. The said case was arising out of section 138 of the N. I. Act. Therefore, it is not applicable. Learned Advocate further relied upon the judgment in the case of *A. R. Antulay Vs Ramdas Srinivas Nayak reported in (1984) 2 SCC 500* where the Hon'ble Apex Court has held that any one can set or put the criminal law into motion. However, this case is also not in respect of application under Section 173 (8). He relied upon the judgment of High Court in the case of *Amrutesh N. P Vs State of Karnataka and others in Criminal Writ Petition No.4857 of 2018*. This court finds that even the judgment is not helpful to the petitioner.

4. Learned Advocate Dr. Godbole for respondent relied upon the judgment in the case of Amrutbhai Shambhubhai Patel Vs Sumanbhai Kantibhai Patel (supra) wherein the Hon'ble Apex Court has specifically dealt with the application under Section 173(8) and held by relying upon the judgment in the case of Abhinandan Jha and Ors Vs Dinesh Mishra reported in 1968 SC 117 and held that the learned Magistrate on his own cannot pass the order under Section 173(8). It is held that in this case that power of Investigating Officer to make prayer for conducting further investigation was not taken away only because charge-sheet has been filed under Section 173 (2). That case application under Section 173(8) was filed by the complainant and it was held that to accept such prayer was beyond jurisdictional competence of the learned Magistrate. Thus, in view of this judgment it is clear that such application can be filed only by the Investigating Officer.

5. This court in view of the above holds that both the

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courts below have rightly passed the order. No fault can be found with the orders passed by the learned Sessions Judge.

6. The writ petition is therefore, dismissed and disposed off.

[KISHORE C. SANT, J.]

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