

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1365 OF 2023

Dr. Sharvari Aditya Kartik ..Petitioner
VS.
Aditya Shankarrao Kartik and ors. ..Respondents

Mr. Vivek V. Salunke for the Petitioner.
Mr. Niketan Nakhawa for Respondent Nos.1 to 3.
Ms. Anamika Malhotra, APP for Respondent No.4-State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 11, 2023

P.C. :

1. Heard learned counsel for the Petitioner, learned counsel for Respondent Nos.1 to 3 and learned APP for the State.

2. The challenge in this Petition is to an order passed by the Revisional Court dismissing the Revision Application thereby confirming the trial Court's order rejecting the Application made by the Petitioner below Exhibit 54 for further investigation in the matter through the Police Inspector.

3. Learned counsel for the Petitioner submits that an Application Exhibit C/25 was made on behalf of the de facto

complainant under Section 302 of the Code of Criminal Procedure (hereafter "Cr.P.C.", for short) for permission to conduct the prosecution through private counsel. The accused is being prosecuted on the basis of the complaint made by the Petitioner for the offence punishable under Sections 498A, 323, 504, 509 read with Section 34 of the Indian Penal Code. The trial Court by the order dated 18.12.2018 granted permission to conduct the prosecution vide Section 302 of the Cr.P.C. to the informant through private counsel.

4. Learned counsel for the Petitioner submitted that after the private counsel came on record, it was realised that the investigation was not properly conducted and therefore, an Application was made under Section 173(8) of the Cr.P.C. to direct the Investigating Officer to conduct the investigation. Learned counsel for the Petitioner submits that in such circumstances the decision relied upon by the Courts below in the case of **Reeta Nag vs. State of West Bengal and Others**¹ will not apply. It is submitted that the Courts below have committed an error in applying the ratio laid down in

¹ 2010 AIR (SC) (Supp) 401

Reeta Nag (supra) as the contextual facts in the present case are clearly distinguishable.

5. Learned counsel for Respondent Nos.1 to 3 and learned APP supported the impugned orders.

6. Heard. I see no reason to disturb the concurrent orders of the Courts below. Merely because the trial Court has permitted the de facto complainant to conduct the prosecution vide Section 302 of the Cr.P.C. through private counsel will not be a distinguishing factor to contend that the decision of the Supreme Court in **Reeta Nag** (supra) will not apply. The Application was made by the de facto complainant under Section 173(8) of the Cr.P.C. The Courts below have referred to the decisions of the Supreme Court in the case of **Reeta Nag** (supra) and **Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and others**² to arrive at a conclusion that after the cognizance is taken, the charge has been framed and when some of the accused have been discharged, such an application would be beyond the jurisdiction of the Magistrate.

² 2017 AIR (SC) 774

7. The Revisional Court has observed that in the present case the trial Court has framed the charge against the accused Nos.1 to 3 i.e. the present Respondent Nos.1 to 3 and the accused No.4 has been discharged by this Court. In such circumstances, the Revisional Court has upheld the order passed by the trial Court observing that the application filed by the complainant before the Magistrate under Section 173(8) of the Cr.P.C. was not tenable. I do not find any error in such a view taken by the Revisional Court. I do not find that the case is made out to interfere with the concurrent view taken by the Courts below.

8. The Writ Petition is dismissed.

(M. S. KARNIK, J.)