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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.539 OF 2023

XYZ] .. Petitioner
vs.
State of Maharashtra & Anr.] .. Respondents

None for the Petitioner.

Mr.Y.M. Nakhwa, APP for the State.

Ms.Adithi Rao i/b Chandni Chawla for Respondent No.2.

PI Borde, I.O., PSI S.B. Sonawane, Versova Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 29th August, 2023.

P.C.

1] Heard the learned APP for the State as well as the learned counsel Ms.Adhithi Rao representing Respondent No.2.

2] A short question involved in the Petition is whether the Statement under Section 164(5) of the Cr.P.C. is permitted to be recorded after completion of investigation and filing of charge sheet, as the request made by the Petitioner is turned down by the Magistrate by passing the following order:-

“Received today as per letter. Charge-sheet is filed and investigation is completed and therefore, now statement under Section 164 Cr.P.C. cannot be recorded. Hence, filed.”

3] The order is ex-facia contrary to Section 164 Cr.P.C. which permits the Metropolitan Magistrate or Judicial Magistrate, whether or not he has jurisdiction in a case to record any confession or statement during the course of investigation under Chapter or under any law for the time being in force, or at any time afterwards before the commencement of the enquiry or trial.

What the Petitioner requested was recording of her statement under Section 164(5-A)(a) since the offence invoked fall within the purview of the said Section.

4] Since the learned Magistrate has erred in ignoring the provision of Section 164 Cr.P.C. the impugned order is quashed and set aside.

The Investigating Officer shall present the Petitioner for recording statement before the Magistrate and the statement shall be recorded within a period of four weeks, from the date of order placed before the Magistrate.

Writ Petition is disposed off in the abovesaid terms.

[BHARATI DANGRE, J]