

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

CRIMINAL WRIT PETITION NO. 1802 OF 2023

Annasaheb Namdev Ingle

..Petitioner

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Arjun Kadam for Petitioner.

Mr. Arfan Sait, APP for State/Respondent No.1.

Mr. Prashant Parab a/w. Ganpat Monde for Respondent No.2.

Mr. S. S. Bedekar for Respondent No.3.

CORAM : SARANG V. KOTWAL, J.

DATE : 7 DECEMBER 2023

PC :

1. Heard Mr. Arjun Kadam, learned counsel for the Petitioner, Mr. Arfan Sait, learned APP for the State/Respondent No.1 and Mr. Prashant Parab, learned counsel for the Respondent No.2.

2. Mr. Bedekar, learned counsel appears and states that, he has instructions to appear for the Respondent No.3. He undertakes to file his Vakilpatra within a period of two weeks from today. However, today he has made his submissions and I have heard him.

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3. The petitioner has challenged the order dated 27.04.2023 passed by the Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, below Exhibit-2 in Application No.192/Misc/2023. All the learned counsel appearing before me today submit that, in the impugned order, the learned Magistrate has not described the parties correctly. The position in fact is that the petitioner herein is neither an accused nor the first informant in the proceedings. The Respondent No.2 herein is the first informant who had lodged the F.I.R. vide C.R.No.488 of 2022 on 04.12.2022 at Gavdevi police station, under sections 13, 145, 147, 149, 323, 341, 427 and 504 of the I.P.C. The Respondent No.3 herein is named as one of the accused along with two unknown persons. The investigation was carried out. The charge-sheet was not filed till the impugned order was passed. Learned APP, on instructions, states that, as of today the charge-sheet is already filed.

4. In the meantime, the first informant i.e. the Respondent No.2 herein Pradeep Ingle filed an application for return of property which was seized during investigation. The property at

present is with the police authorities investigating into the offence. During pendency of the application for return of property preferred by the Respondent No.2 Pradeep Ingle who is the first informant, the petitioner filed an application for intervention in the said application for return of property. His contention was that, he was a necessary party who should be heard before any order of return of property is passed. According to the learned counsel for the Respondent No.2, the Respondent No.3 being an accused had already filed his say in the said application for return of property. Learned counsel for the Respondent No.2 Pradeep Ingle states that, his application is pending before the learned Magistrate in which the impugned order is passed. He categorically makes a statement that he has no objection if the petitioner herein is heard, as well as, if the Respondent No.3 herein is heard while deciding the said Application No.192/Misc./2023. The statement is recorded and accepted. Therefore, the petition can be allowed.

5. Hence, the following order:

O R D E R

- i) The impugned order dated 27.04.2023 passed by the Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, below Exhibit-2 in Application No.192/Misc/2023, is set aside.
- ii) The Petitioner herein, as well as, the Respondent No.3 are allowed to participate at the stage of arguments of the said application. They are permitted to make oral, as well as, written submissions.
- iii) The Application shall be decided as early as possible.
- iv) With this direction, the petition is allowed and disposed of.

(SARANG V. KOTWAL, J.)