

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION (APPW) NO.447 OF 2017**

**IN**

**WRIT PETITION NO. 3606 OF 2016**

**Ashok Kiralal Chaudhari**

**...Applicant**

**Versus**

**The State of Maharashtra and Anr.**

**...Respondents**

....

Mr. R. S. Apte, Senior Advocate i/by Mr. B. G. Tangsali and S. C. Wakankar Advocates for the Applicant.

Mr. Sanjeev P. Kadam a/w Mr. Prashant Raul, Ms. Varsha Thorat and Mr. Mayur G. Sanap for Respondent No.2.

Mr. V. A. Kulkarni, APP for the Respondent – State.

H.C. J. J. Patankar, Lonavala City Police Station is present.

....

**CORAM : PRAKASH D. NAIK, J.**

**DATE : 26<sup>th</sup> APRIL 2024**

**P.C.:-**

1. This application is preferred by the original petitioner in Writ Petition No. 3606 of 2016 for recall of the order to the extent of observations made in paragraph 3, 5 and clause (ii) of the operative part of order dated 22<sup>nd</sup> August 2017.

2. The original petitioner had challenged order dated 10<sup>th</sup> March 2016 passed by learned JMFC, Wadgaon Maval, Pune below Application Exhibit-28 in R.C.C. No.130 of 2013 as well as order dated 3<sup>rd</sup> October 2016 passed by learned Additional Sessions Judge, Pune in Criminal Revision

Application No.135 of 2016. The petitioner was impleaded as accused in the said proceedings. This Court vide order dated 22<sup>nd</sup> August 2017 have set aside the order dated 10<sup>th</sup> March 2016 as well as order dated 3<sup>rd</sup> October 2016. It is pertinent to note that, the order dated 10<sup>th</sup> March 2013 was passed by learned JMFC on the application preferred by defacto complainant for further investigation. However, while adjudicating the aforesaid petition which was submitted by prosecution the Investigating Officer has preferred independent application for further investigation in accordance with section 173(8) of Cr.P.C. and the said application was allowed vide order dated 15<sup>th</sup> July 2017. In the light of the said submission, this Court had made observations in paragraph 3 and 5 of the said order and also directed that, the investigating machinery would conclude the investigation expeditiously without prejudice to the rights and contentions of the petitioner to challenge the order of further investigation.

3. Learned Advocate for the applicant submitted that, no application was submitted before the Court by the prosecution under Section 173(8) of Cr.P.C. nor there was any order passed by the Court directing the further investigation. Further investigation is proceeded without orders of the Court or any such application being preferred by prosecution.

4. Learned Advocate Mr.Kadam appearing for respondent No.2 submitted that, rights of the police to conduct further investigation is implicit in the Code of Cr.P.C. There is no necessity of obtaining directions

from the Court. The further investigation has been carried out which would not get vitiated.

5. Learned Advocate for petitioner submitted that, the petitioner has expired on 24<sup>th</sup> March 2021. The Investigating Agency thereafter, started harassing the wife of the petitioner. She has been impleaded as party in these proceedings along with her sons.

6. Learned APP, on instructions, submitted that, the wife of the original petitioner Smt. Usha Ashok Chaudhary is impleaded as accused.

7. It is relevant to note that, vide order dated 22<sup>nd</sup> August 2017 the rights of original accused/petitioner to challenge the further investigation was reserved.

8. Considering the aforesaid circumstances, the observations made in paragraph 3 and 5 and directions in operative part of clause (ii) of the order dated 22<sup>nd</sup> August 2017 stands recalled. Applicant Usha Ashok Chaudhary or any other accused if impleaded in this proceedings is at liberty to challenge the further investigation conducted by the police and action taken thereof by initiating appropriate proceedings.

9. Application stands disposed off.

10. All the contentions are kept open.

**(PRAKASH D. NAIK, J.)**