

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 2198 OF 2015

- 1) Dr. Pankaj s/o Madhukar Nikumbh,
Age: 36 years, Occu. Medical Practitioner,
R/o Plot No. 40, Laxmi Nagar,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon.
 - 2) Dr. Sachin s/o Madhukar Nikumbh,
Age : 40 years, Occu. Medical Practitioner,
R/o Plot No.30, Laxminagar,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon.
- ... APPLICANTS**

VERSUS

The State of Maharashtra,
Through PSO, Mehunbare,
Tq. Chalisgaon, Dist. Jalgaon.

... RESPONDENT

...

Mr. Ajinkya Kale, i/b Mr. S.B. Talekar, Advocate for Applicants.
Mr. A. S. Shinde, APP for Respondent / State.

...

CORAM : **INDIRA K. JAIN, J.**
DATE : 22nd September, 2015.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent of the parties, the criminal application is heard finally.

2 This application under Section 482 of the Code of Criminal Procedure is filed by Applicants challenging the order dated 16th April, 2015 passed by learned Judicial Magistrate First Class, Chalisgaon, District Jalgaon below Exhibit 70 in Regular Criminal Case No.83 of 2004.

3 In nutshell, facts giving rise to present application may be stated as under:

On the complaint of Dr. Sher Mohammed Khan Abdul Razzak Khan, Additional District Health Officer, Zilla Parishad, Jalgaon, Crime No.66 of 2003 was registered at Mehunbare Police Station under Sections 417, 420, 465, 468, 477-A read with 34 of the Indian Penal Code. On completion of investigation, charge-sheet was filed against present Applicants. During trial prosecution moved an application Exhibit 70 under Section 311 of the Code of Criminal Procedure to examine Dr. Raval as a witness. Application was objected by Accused. On hearing, learned Judicial Magistrate First Class passed following order:

“O R D E R

The prosecution/ Investigating Agency shall be at liberty to record the statement of Mr. Raval under the provisions of section 161 of the Code of Criminal

Procedure and supply copy thereof to the Court, as well as to the accused.

2 If the above compliance is made, the prosecution may press the present application for examining Mr. Raval and the merits will be weighed thereafter.”

4 It is apparent from application Exhibit 70 that it was limited to examine Dr. Raval as a witness. There was no whisper in the application seeking liberty to record statement of witness under Section 161 of the Code of Criminal Procedure.

5 During the course of arguments learned counsel for Applicants submitted that Trial Court exceeded its jurisdiction and overstepped by directing Investigating Agency to record statement under Section 161 of the Code of Criminal Procedure. Learned counsel further submitted that in the midst of trial, learned Judicial Magistrate First Class granted liberty to Investigating Agency to record statement of Dr. Raval under Section 161 of the Code of Criminal Procedure though it was never sought. Learned counsel vehemently contended that such a direction is impermissible in law and the Court ought not to have interfered in the investigation made by the Investigating Agency. In support of the submissions learned counsel for Applicants placed reliance on **D. Venkatasubramaniam**

and others Vs. M. K. Mohan Krishnamachari and others¹.

6 Per contra, learned A.P.P. Mr. A. S. Shinde supported the impugned order. The learned A.P.P. submitted that application Exhibit 70 was filed to examine Dr. Raval as a witness and Dr. Raval being an important witness for the prosecution impugned order to that extent may not be interfered.

7 This Court has gone through the authority referred by learned counsel for Applicants. It reiterates well settled proposition of law that it is a statutory obligation and duty of Investigating Agency to investigate into the crime and normally courts ought not to interfere in the investigation.

8 In the present case name of Dr. Raval was not reflected in the charge-sheet. In any case while considering application under Section 311 of the Code of Criminal Procedure, Court ought not to have directed the Investigating Agency to record statement of witness under Section 161 of the Code of Criminal Procedure as the same would amount to interference in the manner of investigation. Needless to state that generally investigation is the exclusive domain of the authority concerned. This Court thus finds the impugned order per-se illegal. However in the factual background application Exhibit

1 (2009) 10 Supreme Court Cases 488

70 is required to be reconsidered afresh.

9 Hence the following order:

ORDER

- I. Criminal Application No.2198 of 2015 is allowed.
- II. Impugned order dated 16th April, 2015 passed by the learned Judicial Magistrate First Class, Chalisgaon, District Jalgaon below Exhibit 70 in Regular Criminal Case No.83 of 2004 is hereby quashed and set aside.
- III. The matter is remitted back to the Trial Court to reconsider the application Exhibit 70 strictly in accordance with the law.
- IV. Parties to appear before the trial Court on 20th October, 2015.

[INDIRA K. JAIN, J.]

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