

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

CRIMINAL APPLICATION NO. 4660 OF 2014

- 1] Yogesh s/o. Vilas Dalavi
Age: 33 Years, Occ: Business
R/o. Vishwas Nagar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.
- 2] Vishal s/o. Vijay Chattrre
Age 29 Years, Occ: Priest
R/o. Khatkal Galli, Tuljapur,
Tq.Tuljapur, Dist. Osmanabad
- 3] Vinod s/o. Vilas Gangane
Age 36 Years, Occ: Priest
R/o. Jijamata Nagar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad
- 4] Archana w/o. Vilas Gangane
Age: 28 Years, Occ: Household,
R/o. Jijamata Nagar, Tuljapur,
Tq. Tuljapur, Dist: Osmanabad
- 5] Prabhawati Pramod Mardikar
Age 28 Years, Occ: Household,
R/o. Jijamata Nagar, Tuljapur,
Tq.Tuljapur, Dist. Osmanabad
- 6] Chaya Tanaji Londhe
Age 35 Years, Occ: Household
R/o. Vishwas Nagar, Behind Sudarshan
Lodge, Tuljapur,
Tq. Tuljapur, Dist:Osmanabad
- 7] Jayashree Satish Sarade
Age: 30 Years, Occ: Household,
R/o. Hudco, Tuljapur,
Tq.Tuljapur, Dist. Osmanabad

- 8] Amit Ashok Aargade,
Age 24 Years, Occ: Agri.
R/o. Sukrawar Peth, Tuljapur
Tq.Tuljapur, Dist: Osmanabad
- 9] Vijay s/o. Vilas Gangane
Age 28 Years, Occ: Agri.
R/o. Jijamata Nagar, Tuljapur,
Tq.Tuljapur, Dist: Osmanabad
- 10] Manoj s/o. Malaku Gavali
Age 27 Years, Occ: Business,
R/o. Jawahar Galli, Tuljapur
Tq.Tuljapur, Dist. Osmanabad
- 11] Digambar s/o. Pandurang Jadhav
Age 28 Years, Occ: Business,
R/o. Vetar Zopadpatti, Tuljapur
Tq.Tuljapur, Dist. Osmanabad
- 12] Yashoda w/o. Narayan Kambale
Age 70 Years, Occ: Household,
R/o. Katgaon, Tq.Tuljapur,
Dist: Osmanabad.
- 13] Ram s/o. Babu Surwase
Age 37 Years, Occ: Agril.
R/o. Katgaon, Tq.Tuljapur,
District Osmanabad

.. APPLICANTS**VERSUS**

- 1] The State of Maharashtra
[Copy to be served on the Ld.P.P.
in the High Court of Judicature of
Bombay, Bench at Aurangabad]
- 2] Abhishek Rajabhau @ Rajendra Mane,
Age 21 Years, Occ: Student,
R/o. Hudco, Tuljapur, Tq.Tuljapur,
Dist:Osmanabad

.. RESPONDENTS

.....
Mr.Krishna K. Kulkarni, Advocate for the Applicants

*Mr.S.D.Kaldate, Additional Public Prosecutor, for
Respondent No.1- State.*

Mr.N.S.Patil, Advocate for respondent No.2.
.....

**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

**RESERVED ON : 5th January, 2015
PRONOUNCED ON: 13th January, 2015**

JUDGMENT [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith heard finally with the consent of the Counsel for the parties.

3] This Criminal Application is filed under Section 482 of Criminal Procedure Code, praying therein for quashing and setting aside the First Information Report [FIR No.160/2014] dated 02.08.2014 registered at Police Station Tuljapur and the order dated 11.07.2014 passed by the learned Judge of the Sessions Court, Osmanabad in Criminal Revision No.39/2013.

4] It is the case of the applicants that, the

respondent No.2 [Original Complainant] filed Criminal Complaint on 25.03.2013 under Section 120 (B), 147, 148, 149, 307, 324, 452, 504, 506 and 34 of Indian Penal Code in the Court of Judicial Magistrate First Class, Tuljapur. The Judicial Magistrate First Class, Tuljapur directed to register the complaint as Miscellaneous Criminal Complaint and also directed the complainant to remain present for verification on 12.04.2013. Being aggrieved by the order of Judicial Magistrate First Class, Tuljapur, dated 25.03.2014, the complainant filed Criminal Revision before the Sessions Court at Osmanabad on 05.04.2013. The applicants filed their say and resisted the said Revision Application. The Sessions Court at Osmanabad allowed the Criminal Revision on 11.07.2014 and directed the Judicial Magistrate First Class, Tuljapur to send the complaint to Tuljapur Police Station for investigation under Section 156 (3) of Criminal Procedure Code. Accordingly, on 02.08.2014, the FIR came to be registered.

5] The learned counsel appearing for the applicants submits that, Criminal Revision Application which was filed by the respondent No.2, was not maintainable inasmuch as said Revision was filed taking exception to the

interlocutory order passed by the Judicial Magistrate First Class. It is submitted that, even if the allegations in the complaint are taken in its entirety, no offence is disclosed against the applicants. The learned counsel appearing for the applicants invited our attention to the grounds taken in the application and submits that, application deserves to be allowed. In support of contention that, Revision is not maintainable against the interlocutory order, learned counsel pressed into service exposition of the Supreme Court in the case of ***Smt.Mona Panwar Vs. Hon'ble High Court of Judicature at Allahabad through its Registrar & ors.***¹.

6] On the other hand, the learned Counsel appearing for the respondent No.2 submits that, the Sessions Court had jurisdiction to entertain the Revision since order passed by the Judicial Magistrate First Class, Tuljapur was not legally sustainable.

7] We have given careful consideration to the submissions of the learned counsel appearing for the applicants, learned Additional Public Prosecutor for the

1. 2011 Cri.L.J. 1619

Respondent - State and the learned counsel appearing for respondent No.2, and also perused the grounds taken in the application and annexure thereto. The present Application raises following question of law for consideration and determination of this Court:

Whether the learned Judge of the Sessions Court, Osmanabad was empowered to entertain the Revision filed by the respondent No.2, challenging the order passed by the Judicial Magistrate First Class, Tuljapur, exercising discretion and directing the complainant to remain present before the Court for verification?

The provisions of Section 397 (2) of Code of Criminal Procedure, 1973, reads thus:

397. Calling for records to exercise powers of revision. -

(1)

(2) *The powers of revision conferred by subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*

It is not in dispute that, order passed by the Judicial Magistrate First Class was in the nature of

interlocutory order for ascertaining whether there is *prima facie* case. The Judicial Magistrate First Class, Tuljapur entertained the complaint filed by the respondent No.2 herein and ordered to register said complaint in Misc. Criminal Register and directed the respondent No.2 to appear before the Court for verification on 12th April, 2013.

The provisions of Section 156 of Code of Criminal Procedure Code, reads thus:

156. Police officer's power to investigate cognizable case. -

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Upon careful perusal of the provisions of Section 156 (3) of Criminal Procedure Code, it is abundantly clear that, said provisions of the Code provides that, the

Magistrate empowered under Section 190 of the Code may order such an investigation as mentioned in sub-section (1) of said section or to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. In the present case, the Magistrate has exercised his discretion and ordered to register the Misc. Criminal Case and directed the respondent No.2 to remain present before the Court for verification. Passing of such order and exercise of discretion by the Judicial Magistrate First Class, Tuljapur was within his jurisdiction under the relevant provisions of Criminal Procedure Code.

The order passed by the Judicial Magistrate First Class was interlocutory in nature, and therefore, in view of the provisions of Section 397 (2) of Criminal Procedure Code, Revision against interlocutory order was not maintainable before the Sessions Judge, Osmanabad. The learned counsel appearing for the applicants is right in placing reliance in the case of **Smt.Mona Panwar** [supra]. The Hon'ble Supreme Court while interpreting and explaining the scope of the provisions of Section 156

vis-a-vis Section 190 and 200 of Criminal Procedure Code, in para Nos. 9 and 10 of said Judgment, held thus :

9. Section [156\(1\)](#) of the Code authorizes the police to investigate into a cognizable offence without requiring any sanction from a judicial authority. However, sub-section (3) of Section [156](#) of the Code provides that any Magistrate empowered under Section [190](#) of the Code may order such an investigation as mentioned in sub-section (1) of the said Section. Section [190](#) of the Code deals with cognizance of offences by Magistrates and inter alia provides that any Magistrate of the First Class may take cognizance of an offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts and (c) upon information received from any person other than a police officer or upon his own knowledge that such offence has been committed. Neither Section [154](#) nor Section [156](#) of the Code contemplates any application to be made to the police under Section [156\(3\)](#) of the Code. What is provided in Section [156\(1\)](#) of the Code is that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. However, this Court finds that in the present case it was alleged by the Respondent No. 3 that she had filed complaint before police but according to her, the

police officer in charge of the police station had refused to register her complaint and, therefore, she had made application to the Senior Superintendent of Police as required by Section [154\(3\)](#) of the Code, but of no avail. Therefore, the Respondent No. 3 had approached the appellant, who was then discharging duties as Judicial Magistrate II, Court No. 14, Saharanpur. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section [156\(3\)](#) of the Code and second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section [200](#) and proceed further with the matter as provided by Section [202](#) of the Code. An order made under Sub-section (3) of Section [156](#) of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section [156\(1\)](#). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section [156](#) and ends with the final report either under Section [169](#) or submission of charge sheet under Section [173](#) of the Code. A Magistrate can under Section [190](#) of the Code before taking cognizance ask for investigation by the police under Section [156\(3\)](#) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section [202](#) of the Code. The phrase "taking cognizance of" means

cognizance of offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section [190\(1\)\(b\)](#) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section [200](#) and the provisions following that Section. However, when the Magistrate had applied his mind only for ordering an investigation under Section [156\(3\)](#) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence. Taking cognizance is a different thing from initiation of the proceedings. One of the objects of examination of complainant and his witnesses as mentioned in Section [200](#) of the Code is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such person. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

10. From the order dated August 1, 2009, passed by the appellant, it is evident that the appellant had called for report from the concerned police station and considered the said report wherein it was inter alia mentioned that no case was registered on the basis of the application made by the Respondent No. 3. The respondent No. 3 at the time of filing complaint before the Appellant had filed her own affidavit, carbon copy of the application sent by her to the Senior Superintendent of Police, Saharanpur with its postal registration and photocopy of the medical certificate. Under the circumstances the appellant had exercised judicial discretion available to a Magistrate and directed that the application, which was submitted by the respondent No. 3 under Section 156(3) of the Code, be registered as complaint and directed the Registry to present the said complaint before her on August 28, 2009 for recording the statement of the respondent No. 3 under Section 200 of the Code. The judicial discretion exercised by the appellant was in consonance with the scheme postulated by the Code. There is no material on the record to indicate that the judicial discretion exercised by the Appellant was either arbitrary or perverse. There was no occasion for the learned Single Judge of High Court to substitute the judicial discretion exercised by the appellant merely because another view is possible. The Appellant was the responsible judicial officer on the spot and after assessing the material placed before him he had exercised the judicial discretion. In such circumstances this Court is of the opinion that the High Court had no

occasion to interfere with the discretion exercised judiciously in terms of the provisions of Code. Normally, an order under Section [200](#) of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section [200](#) of the Code would be directed by the Magistrate only when a case is found to be serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section [156\(3\)](#) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section [200](#) of the Code. Here, in this case the respondent No. 3 had averred in the application submitted before the appellant that the Officer-in-charge of the Nakur Police Station had refused to register her complaint against her father-in-law regarding alleged rape committed on her and that no action was taken by the Senior Superintendent of Police though necessary facts were brought to his notice. Under the circumstances, the judicial discretion exercised by the appellant, to proceed under Section [200](#) of the Code in the light of principles of law laid down by the Allahabad High Court in various reported decisions could not have been faulted with nor the

Appellant could have been subjected to severe criticism as was done by the learned Single Judge. There was no occasion for the learned Single Judge to observe that the Appellant, a Judicial Magistrate, had done the gravest injustice to the victim or that though the Appellant is a lady Magistrate, yet she did not think about the outcome of ravishing the chastity of daughter-in-law by her father-in-law or the seriousness of the crime committed by the accused and the reason assigned by the learned Magistrate in not directing the police to register the FIR indicated total non-application of mind by the Appellant and that the order dated August 1, 2009, passed by the Appellant, was a blemish on the justice system. The learned Single Judge was not justified in concluding that the Appellant as Judicial Magistrate had passed the order dated August 1, 2009 ignoring all judicial disciplines or that the Appellant had not at all applied her judicial mind and had only referred to some of the judgments of the Allahabad High Court, which were contrary to the opinion of the Apex Court rendered in many decisions. There was no reason for the learned Single Judge of the High Court to record his serious displeasure against the order of the appellant which was challenged before him as an illegal order nor the learned Single Judge was justified in severely criticizing the conduct of the Appellant as Judicial Magistrate because the application submitted by the respondent N. 3 was ordered to be registered as a complaint and was not dismissed.

[Underlines are supplied]

8] In the light of discussion in foregoing paragraphs inevitable conclusion is that, the Revision before the Sessions Court, Osmanabad was not maintainable against interlocutory order passed by the Judicial Magistrate First Class, Tuljapur, and therefore, the order passed by the Judge of the Sessions Court at Osmanabad is without jurisdiction, hence same is quashed and set aside, consequently First Information Report No. 160 of 2014 dated 02.08.2014 registered at Police Station, Tuljapur stands quashed.

9] Rule made absolute in terms of prayer clauses 'C' and 'D'. The Criminal Application stands disposed of accordingly.

Sd/-

[A.M.BADAR, J.]

Sd/-

[S.S.SHINDE, J.]

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DDC