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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO. 164 OF 2013**

Atul Pratap Mhetre and another ... Petitioners

Versus

State of Maharashtra and another ... Respondents

Mr. A.S. Munderggi i/by S.S. Salunkhe for the petitioners.

Mr. Rajesh More, A.P.P. for the State.

Mr. K.S. Deal for respondent no. 2.

**CORAM : M.L. TAHALIYANI, J.  
DATED : JUNE 11, 2015**

**P.C.**

Heard Mr. Munderggi, learned senior counsel for the petitioners, Mr. Deval, learned counsel for respondent no. 2 and learned A.P.P. for the State.

2. Admit. By consent heard finally.

3. By this Writ Petition, petitioners seek quashment of the criminal complaint pending in the court of J.M.F.C. vide Criminal Case No. 264 of 2010. In other words petitioner submits that the order passed by the Magistrate on 21<sup>st</sup> March, 2012 issuing process for the offence punishable under section 381 and 406 of the I.P.C. may be set aside. Revision application filed by the petitioners before the Sessions Court has been

dismissed and therefore, the present writ petition.

4. Respondent no. 1 alleges that the petitioners had committed theft in respect of the sand worth Rs. 5 lac which was seized under the panchanama in exercise of their powers. Petitioner no. 1 is Tahsildar and petitioner no. 2 is a Nayab Tahsildar.

5. I have gone through the complaint filed by respondent no. 2. It is alleged in the said complaint that the petitioners had committed theft of the sand worth Rs.5,13,810/- after 8.00 p.m. on 23<sup>rd</sup> August, 2010. The complainant has not stated anywhere in the complaint as to who had seen the petitioners while removing the sand. Mr.Mundergi, learned counsel for the petitioners submits that the names of the witnesses cited by respondent no. 2 in his complaint are the same who were examined by the police during the course of investigation of the case of theft registered against respondent no. 2. In this regard, it may also be mentioned here that the complaint against the petitioners was initially sent to police for investigation under section 156(3) of the Cr.P.C. and report. Police submitted negative report. Learned Magistrate thereafter recorded statement of the complainant/respondent no. 2. He also recorded statement of two more witnesses who were produced by respondent no. 2 in support of his case. After recording statement of respondent no. 2 and his witnesses learned

Magistrate issued process against both the petitioners to answer charge for the offence punishable under section 381 and 406 of I.P.C. Learned senior counsel submits on behalf of the petitioners that there is nothing in the complaint or the statements of the witnesses which may prima facie disclose that the petitioners had either committed theft or they had committed criminal breach of trust.

6. Learned counsel for respondent no. 2 on the other hand submits that the statement of the witness Jaisingh clearly indicates that the petitioners were involved in the removal of sand which was earlier stored at the particular place after seizure of the same under valid panchanama. I have gone through their statement of the said witness. The witness has stated that Talathi had told him that the sand was removed under the orders of the petitioners. It is interesting to note that Talathi has not been made accused. Talathi is not cited as witness by respondent no. 2. As such by no stretch of imagination even charge can be framed against either of the petitioners. Continuation of the criminal case against the petitioners is clear abuse of process of court and therefore, the complaint needs to be quashed. The order passed by the Magistrate issuing process against the petitioners needs to be set aside. Hence, I pass the following order :

7. Writ petition is allowed.

8. The order passed by the learned Magistrate issuing process against the petitioners is set aside. The order passed by the learned Sessions Court dismissing revision application is also set aside. Petition stands disposed of.

**(JUDGE)**