

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

CRIMINAL WRIT PETITION NO. 905 OF 2015

Dnyandeo Dagadoba Dalvi & Ors. .. Petitioners

v/s.

The State of Maharashtra ..Respondent

Mr. Rahul S. Kate for the petitioners

Mr. K.S. Patil for the complainant

Mr. J.P. Yagnik, APP for the respondent State

**CORAM: RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 12th MARCH, 2015.

P.C.

1. At the outset, Mr. Kate, learned Counsel for the petitioners makes a statement that he is restricting this petition to the relief claimed in prayer clause (c). He states that he is not pressing relief claimed in prayer clause (a). Statement is accepted.

2. By the relief claimed in prayer clause (c), the petitioner is challenging the order dated 2nd March, 2015 whereby the learned

J.M.F.C. Baramati has directed to add Section 307 of the IPC in the FIR No.34 of 2015, registered with Baramati Taluka Police Station.

3. The impugned order cannot be sustained in the light of the decision in the case of ***M.C. Abraham and Anr. Vs. State of Maharashtra & Ors. (2003) 2 SCC 649.*** The relevant observations of the Supreme Court contained in paragraph 17 of M.C. Abraham (supra) case are reproduced as under :-

“17. The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report filing the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating

agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation.”

4. In the case of ***Shariff Ahmed and Ors. Vs. State (NCT of Delhi), (2009) 14 SCC 184***, the Apex Court has reiterated the principles laid down in the case of *M.C. Abraham (Supra)*.

5. It is thus clear from the above decisions of the Apex Court that the Magistrate cannot interfere in the investigation, much less, direct the Investigating Officer to add any particular section. It is the prerogative of the Investigating Agency to investigate the crime and to apply appropriate sections on the basis of the material collected in the course of the investigation.

5. Under the circumstances, the impugned order, dated 2nd March, 2015 passed by the learned J.M.F.C., Baramati, directing

the Investigating Officer to add Section 307 is quashed and set aside. Rule is made absolute in terms of prayer clause (c).

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)