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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1013 OF 2014**

Mrs. Rehana Mohammed Kasam and anr. ... Applicants

Versus

The State of Maharashtra ... Respondent

Mr. Shashikant Chaudhari along with Mr. Nilesh Tank i/by Chaudhari & Associates for the applicants.

Smt. P.P. Bhosale, A.P.P. for State.

Mr. Sandeep R. Patil for Intervener.

**CORAM : M.L. TAHALIYANI, J.
DATED : MARCH 31, 2015**

P.C.

Admit. By consent, heard finally.

2. This application impugns the order dated 21st May, 2014 passed by the 3rd Judicial Magistrate, First Class, Vasai in Criminal Case being OMA/333/2014. The application has been dismissed under section 203 of the Code of Criminal Procedure (for short “the Code”). It is seen from the record and proceedings that after receipt of the complaint for issuance of the order under section 156(3) of the Code, the learned Magistrate has opted to issue

order under section 202 of the Code. However, what he failed to do is that he did not record the statement of the complainant on oath before sending the complaint to police under section 202 of the Code. What is more shocking is that the letter issued to the police directed the police to register F.I.R. and investigate the complaint. Complaint cannot be sent to the police under section 202 of the Code without recording the statement of the complainant on oath. Similarly, once an order under section 202 of the Code has been passed, there cannot be registration of FIR. It is simple inquiry or investigation under section 202 of the Code to assist the trial magistrate to decide as to whether process as prayed can be issued or not.

3. After so called inquiry or investigation, police in fact registered FIR and after so called investigation or inquiry, submitted a report that the dispute was of civil nature. Learned Magistrate therefore, dismissed the complaint under section 203 of the Code.

4. It is very obvious that the whole procedure adopted in entertaining and deciding the complainant of the applicant was absolutely without authority of law and consequently order passed by the Magistrate cannot be sustained. I, therefore, pass the following order :

5. The order passed by the Magistrate on 12th September, 2014 below Exh 1 in O.M.A. No. 333 of 2014 is set aside. The complaint is restored to its original position.

6. Learned Magistrate is directed to hear the learned advocate for the applicants and to decide as to whether the order under section 156(3) of the Code can be issued or whether he finds it appropriate to proceed under section 202 of the Code.

7. Application stands disposed of accordingly.

(JUDGE)